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SECOND BOOK.

OF THINGS.

FIRST TITLE.

OF THINGS AND THEIR DISTINCTION.

FIRST SECTION.

Of things in general.

551. The law understands by things, all goods and rights, which can be the subject of property.

552. All what belongs to a thing by right of accession, including fruits, natural as well as industrial, as long as they are hanging by branches or roots, or are attached to the soil, constitutes part of the thing.

553. Civil fruits are only considered to constitute part of the thing, as long as they are not due; saving the special dispositions of law and agreements.

554. Natural fruits are :

1. Those, which the earth produces spontaneously ;
2. The production and increase of animals.

Industrial fruits, which are drawn from the soil, are everything obtained by cultivation.

Civil fruits are rents of houses and farms, interests of sums of money and arrears of rents.

SECOND SECTION.

Of the distinction of things.

555. Things are corporeal or incorporeal.

556. Things are moveable or immoveable, according to the dispositions of the two following sections.

557. Moveable things are usable or not usable; usable are such as are consumed by use.

THIRD SECTION.

Of immoveable things.

558. Are immoveable things :

1. Heritages and what is built thereon ;
2. Mills, with the exception of those which are treated of in art. 562 ;
3. Trees and plants, attached to the soil by their roots, fruits not yet gathered from the trees, likewise minerals, as stone-coal, peat and the like, as long as these objects are not separated from the soil and dug out ;
4. The cuttings of underwood, and wood of forest trees, as long as it is not cut ;

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5. Pipes or gutters, serving to conduct water in a house or on a heritage ;

And, in general, every thing which is a fixture to a heritage or to a building.

559. By destination are included among immoveable things :

1. In manufactories, factories, mills, smitheries, and the like immoveable things, the presses, stills, ovens, vats, tubs and further implements, essentially belonging to their working, though these objects may not be fixtures.

Furthermore on plantations the floats which belong thereto.

2. In dwelling houses, the mirrors, pictures and other ornaments, when the wood or masonwork on which they are fastened, forms part of the wainscot, wall or plasterwork of the apartment ; although these objects are not otherwise fastened by nails ;

3. The materials arising from the demolition of an edifice, if they are intended to reconstruct the building ;

And, in general, all such objects, which the proprietor has attached to his immoveable thing, for perpetual use.

The proprietor shall be considered to have attached such objects to his immoveable thing for perpetual use, when they are fastened thereto by works of earth, carpentry or masonry, or when they cannot be separated therefrom, without breaking or injuring them, or without breaking or injuring such portion of the immoveable object, to which they are fastened.

560. Are also immoveable things the following rights :

1. The usufruct and use of immoveable things ;
2. Servitudes ;
3. The right of building ;
4. The emphyteutic right ;
5. Ground-rents, due in money or in kind ;
6. Actions for the recovery or delivery of immoveable things.

FOURTH SECTION.

Of moveable things.

561. Moveable things by their nature are those, which can remove themselves, or which can be removed.

562. Vessels, boats, ferries, mills and baths, placed on floats, or otherwise loose, and the like objects, are moveable things.

563. By determination of the law are considered as moveable things :

1. The usufruct and use of moveable things ;
2. Fixed rents, whether perpetual or liferents ;
3. Obligations and actions relative to sums of money due, or moveable goods ;
4. Actions or shares in companies of money trade, commerce or industry, even when immoveable goods, depending on such enterprises, may belong to those companies.

These actions or shares are considered to be moveable things, but in regard of each of the associates only, as long as the corporation exists ;

5. Shares in the country's debt, whether they consist of inscriptions on the ledger, or of certificates, bonds, obligations or other effects, with their coupons or certificates of interest ;
6. Actions in, or coupons of obligations of all other loans, including those contracted by foreign powers.

564. When in the law, or in any civil transaction the expression is used of *moveable goods, personally, house furniture, furnishment, or a house with all that is found therein*, without any addition, explanation, extension, or limitation, the aforesaid expressions shall be considered to comprehend such objects, as are indicated in the following articles.

565. The expression *moveable goods* comprehends, without exception, everything which, according to the rules established above, is accounted moveable.

566. The expression *personally* comprehends everything, which in manner as above, is accounted moveable, with the exception of ready money, actions, active debts and other rights mentioned in art. 563 ; of merchandize and raw materials, of implements belonging to manufactories, factories or agriculture, as also of materials intended for building, or arising from demolition.

567. The expression *house furniture* comprehends everything, which according to the previous article is considered *personally*, with the exception of horses and live stock, of carriages, and their appurtenances, of jewelry, books and manuscripts, drawings, prints, pictures, statues, medals, instruments of sciences and arts and other precious and rare articles, of body linen, arms, grain, wines and other articles of food.

568. The expression *a house with all that is found therein* comprehends everything, which, according to art. 565, is accounted moveable goods, and is found in the house, with the exception of the ready money and of the active debts and other rights, the titles of which may be found in the house.

569. The expression *furnishment* comprehends alone the furniture, which serve for use and ornament in the apartments, as tapestry and carpets, beds, chairs, mirrors, clocks, tables, porcelain and other objects of that kind.

Pictures and statues, which form part of the furniture of an apartment, are also included, but not at all the collections of pictures, prints and statues, placed on galleries of art and in special apartments.

It is the same with regard to porcelain ; all such as form part of the ornament of an apartment, are comprised in the expression of furnishment.

570. The expressions *a furnished house, or a house with its furniture* comprehends alone the furnishment.

FIFTH SECTION.

Of things with respect to their possessors.

571. There are things, which belong to no one; the others are the property either of the country, or of corporations or of private individuals.

572. Heritages and other immoveable things, which are not administered and have no owner, likewise the things of him, who died without heirs, or whose succession is abandoned, belong to the country.

573. Likewise belong to the country the roads and streets, which are to its charge, the strands of the sea, the rivers and streams navigable and which can carry floats, and their shores, the great and small islands and flats, which arise in those waters as also the harbours and roadsteads. without prejudice to the rights of private individuals or corporations, acquired by title or possession.

574 By shores in the preceding article are understood the banks of rivers, lakes or streams, which at ordinary times, when the water is at its highest mark, are covered by that water, and not that, which is inundated by floods.

575 As property of the country are also considered, all grounds and buildings, which belong to the country's fortifications, and accordingly all grounds upon which any works of defense have been erected, as : walls, parapets, moats, covered ways, glacis or advance works, plains upon which military edifices are erected, lines, posts, intrenchments, redoubts, dikes, sluices, canals and their banks; also without prejudice to the rights of private individuals or corporations, acquired by title or possession.

576 In all fortifications of the country, is considered military ground the entire superficies, included :

1. In fortifications provided with covered ways and glacis, between the foot of the slope of the main-wall. and the berme of the covered way, and if this is provided with an advance moat, unto the outer-bank of this moat, the terreplein of the bulwarks is included in this, according to a line drawn through the gorges from one curtain to the other ;
2. In fortifications without covered ways or glacis, from the inner berme of the main-wall unto the outer bank of the moats of the envelopes or outworks ;
3. In fortifications, without any out works, from the interior foot of the terreplein unto the outer bank of the surrounding moats ;
4. Finally, if behind the interior foot of the terreplein there may be fosses, bermes etc. these strips of land also, with their growth of trees, and other sheds are considered to belong to the military ground.

577. All unoccupied forts, likewise redoubts, advance posts, intrenchments, lines and batteries, are entirely military ground, with all the grounds situated as well in the rear, as in front, and in the flanks, and which were bought by government at their erection.

The dispositions of the preceding article are applicable to all the occupied forts.

578. Things belonging to a corporation are those, which are the joint property of a body corporate.

579. Things belonging to private individuals are those, which are the distinct property of one or more single individuals.

580. One can have on things, either, a right of possession, or a right of property, or a right of heirship, or a right of usufruct, or a right of servitude, or a right of pledge or mortgage.

SECOND TITLE.

OF POSSESSION, AND THE RIGHTS WHICH PROCEED FROM IT.

FIRST SECTION.

*Of the nature of possession, and of the things, which
can be the subject thereof.*

581. By possession is meant the retention or enjoyment of a thing, which one has in his power, individually or through another, as if it belonged to him.

582. Possession is in good faith or in bad faith.

583. Possession is in good faith, when the possessor possesses the thing by virtue of a manner of acquiring property, the defects of which are unknown to him.

584. Possession is in bad faith, when the possessor is aware that the thing, which he possesses, does not belong to him in property.

The possessor is considered to be in bad faith, from the moment that an action is instituted against him on that account, if the suit be decided against him.

585. The good faith of the possessor is always presumed; he who pretends that bad faith exists, must prove it.

586. One is always considered to possess for himself, as long as it is not proved, that he has commenced to possess for another.

587. When one has commenced to possess for another, it is always presumed that the possession is continued under the same title, if the contrary be not proved.

588. One cannot by his own will, neither by the simple lapse of time change for himself the cause and principle of his possession.

589. Things, which are not in trade, cannot constitute objects of possession.

It is the same in respect as well of discontinuous, as of non-apparent servitudes, saving the dispositions of art. 605.

SECOND SECTION.

*Of the manner in which possession is acquired,
retained and lost.*

590. Possession is acquired by the act of bringing a thing under one's power, with the intention of keeping it for one self.

591. Insane persons cannot by themselves acquire possession.

Minors and married women can actually acquire possession of a thing.

592. One can acquire possession of a thing by him self, or through another, who has commenced to possess in one's name.

In the latter case one acquires possession, even before one be came aware of the thing having been taken in possession.

593. The possession of every thing held by a person deceased, goes, from the moment of his death, to his heirs, with all its qualities and defects.

594. One retains possession, as long as it has not passed to another, or has not manifestly been abandoned.

595. One loses possession voluntarily, as soon as it is transferred to another.

596. One loses possession, even without the will of transferring, the thing to another, when one manifestly abandons it.

597. One loses, against his will, the possession of a piece of land, heritage or building :

1. When another puts himself in possession thereof, against the will and desire of the possessor, and retains the enjoyment quietly during the period of one year ;

2. When a heritage is drowned by an extraordinary accident. Possession is not lost by a temporary inundation.

The possession of a generality of moveable things, is lost in the manner indicated in the first part of this article.

598. Possession of a moveable thing is lost against the will of the possessor :

1. When the thing has been taken away or stolen ;

2. When it is lost, and one does not know where it is to be found.

599. Possession of incorporeal things is lost, when another has had the quiet enjoyment thereof during one year.

THIRD SECTION.

Of the rights, which proceed from possession.

600. Possession in good faith gives, in respect of the thing, to the possessor the right :

1. That he is provisionally, and until the moment of the judicial revendication, considered as owner ;

2. That he acquires the property of the thing by means of prescription ;

3. That until the judicial revendication he enjoys the fruits, which the thing produces ;

4. That he must be maintained in the possession of the thing, when he is disturbed therein ; or reestablished in the possession, when he has lost it.

601. Possession in bad faith, gives to the possessor, in respect of the thing, the right :

1. To be considered as owner, provisionally, and until the moment of the judicial revendication ;
2. To enjoy the fruits of the thing, but subject to the obligation of restoring them to those having a right to them ;
3. To be maintained or reestablished in the possession, as is said in No. 4 of the preceding article.

602. The action to be maintained in possession takes place, when any one has been disturbed in the possession of a piece of land or heritage, a house or building, of a real right or of a generality of moveable things.

603. This action shall also be allowed, although the possession may have been obtained from one, who was incompetent to alienate.

604. It cannot take place against him, who disputes the right to a servitude, unless the difference may be in regard of a continuous and apparent servitude.

605. When any dispute arises regarding the validity of a legal title of a discontinuous or non-apparent servitude, the judge can command, that the party, who at the commencement of the dispute has the enjoyment of it, shall retain that enjoyment during the suit.

606. There can be no action to be maintained in possession, in respect of objects, which the possessor can not lawfully possess.

607. Moveable corporeal things cannot be the subject of an action to be maintained in their possession, saving the final disposition of art 602.

608. Lessees, farmers and others, who are keepers of a thing for another, may not commence an action to be maintained in possession.

609. The action to be maintained in possession can be commenced against each and every one, who disturbs the possessor in his possession, even against the proprietor, saving the petitory action of the latter.

If however the possession was acquired precariously, secretly or by violence, the possessor cannot commence the action to be maintained in possession, against him, from whom possession was in such manner acquired, or from whom it was taken.

610. The action to be maintained in possession must be commenced within a year, counting from the day, on which the possessor has been interrupted in his possession.

611. This action tends to cause the interruption to cease, and to maintain the possessor in his possession, with compensation of costs, damages and interests.

612. Possession is considered always to have been with him, who, not having lost the right of possession, has been maintained therein by the judge, saving the disposition hereafter, regarding the fruits.

613. If at the occasion of an action to be maintained in a possession, which is claimed from both sides, the judge deems, that it is not properly proven, he shall be at liberty, without giving judgment on the possessory right, to command, either that the object be placed under judicial sequestration, or that parties shall proceed with the petitory action, or he can grant provisional possession to one of the parties.

This possession gives only the right of having enjoyment of the thing in dispute, during the suit regarding the property, and under obligation of accounting for the fruits enjoyed.

614. If the possessor of a heritage or of a building has lost the possession thereof without violence, he can commence an action against the retainer, for the purpose of being reestablished and maintained in the possession.

615. In case of violent deprivation the action for reestablishment in possession takes place, as well against those who have committed the violence, as against those, who have commended it.

They are all *in solidum* responsible for the whole.

In order to be admissible in this action, the plaintiff has only to prove the act of violent deprivation.

616. The same action can be commenced against all those, who have divested themselves in bad faith of the possession.

617. The action to be reestablished and maintained alluded to in art. 614, must be commenced within one year, counting from the day on which the possession has been disturbed; and in case of violent deprivation, the action for reestablishment in possession must be commenced, within the same term, counting from the day on which the violence has ceased.

One is no longer admissible in this action, as soon as one shall have commenced a petitory suit.

618. The action for restoration and reestablishment in possession, serves always to maintain the former possessor in the possession, and to cause him to be considered, as if he had never lost possession.

619. In these actions, in respect of the possessors in good, as well as in bad faith, regarding their rights relative to the enjoyment of the fruits, and the expenses made during possession, the rules shall be valid which are hereafter prescribed in the third title on this subject for the revendication of property.

620. Even after the expiration of the year, which the law allows to commence the action for reestablishment in possession, the one, who has been deprived in a violent manner of his possession, has a right to cause, by an ordinary action, the person, who has committed the violence, to be condemned to the restoration of every thing, that has been taken away from him, and to the compensation of costs, damages and interests occasioned by such acts of violence.

THIRD TITLE.

OF PROPERTY.

FIRST SECTION.

General dispositions.

621. Property is the right of having the free enjoyment of a thing, and disposing of it in the most absolute manner, provided no use be made thereof, contrary to the ordinances, enacted by the authority which is competent thereto, according to the Rules for the Administration of Government, and provided no nuisance be caused to the rights of others; all this without prejudice to the expropriation for the sake of general utility, on previous indemnity, according to the Rules for the Administration of Government.

622. Property in the ground imports the property of what is above and under the ground.

The proprietor may make upon the ground all plantations and buildings which he shall judge convenient, saving the exceptions established in the fourth and fifth title of this book.

Under the ground he may build and dig as he shall judge convenient, and derive from such excavations all the fruits, which they are capable of producing, saving the restrictions resulting from general ordinances of police, on the subject of mines, fens, and other like objects.

623. Every property is presumed to be free. He, who pretends to have any right on the thing of another, must prove that right.

624. The division of a thing, which belongs to more than one person, takes place according to the rules prescribed in respect of the partition and division of successions.

625. The proprietor has a right to revendicate the thing belonging to him, from every possessor, in the state in which it is found.

626. The possessor in good faith has a right to keep to himself all the fruits, which he has enjoyed from the thing revendicated, until the day of the action.

He is bound to restore all the fruits enjoyed since the commencement of the action, deducting the costs made to obtain those fruits, and to cultivate, sow and till the ground.

He has further a right to reclaim the necessary expenses, made for the preservation and for the benefit of the thing, as also to keep the thing reclaimed under him, as long as he is not indemnified for the costs and expenses, mentioned in this article.

627. With the same right, and in like manner, the possessor in good faith can reclaim, at the restoration of the thing demanded, the costs made by him in manner as above, to obtain those fruits, which at the moment of restoration, are not yet separated from the ground.

628. He has on the contrary no claim for the restoration of such costs, as have been made by him to obtain fruits, which he keeps, in consequence of his possession.

629. Neither has he a right, at the restoration of the thing, to charge the costs and expenses made by him for the maintenance of the thing, which are not understood to be included among the expenses for the preservation and for the benefit of the thing, mentioned in art. 626.

When any difference arises, respecting what is to be considered as costs of maintenance the prescriptions regarding usufruct shall be followed in this respect.

630. The possessor in bad faith is bound :

1. To restore all the fruits of the thing reclaimed, together with it, even such as have not been enjoyed, if the proprietor could have enjoyed them ; he may however, as is prescribed in art. 626, deduct or reclaim the costs which have been made by him, during his possession, for the preservation of the thing, as well as those made to obtain the fruits, and to cultivate, sow and till the ground ;
2. To compensate all costs, damages and interests ;
3. To pay the value of the thing, in case he may not be able to restore it, even when such thing has been lost without his fault, or by accident unless he may be able to prove, that the thing would have perished any how, if the proprietor had possessed it.

631. He who has put himself in possession, in a violent manner, cannot reclaim the expenses made by him, even when they were necessary for the preservation of the thing.

632. The expenses for use and embellishment, remain to the charge of him, who has possessed in good or in bad faith ; but he has a right to take to himself the objects contributed for the use and embellishment, if such can take place, without injuring the thing.

633. He who claims the restoration of a thing stolen or lost, is not bound to return to the possessor, the purchase money expended by him, unless the possessor has bought the thing at a fair or other market, or at a public auction, or from a merchant, who is known to deal ordinarily in such objects.

634. Goods thrown in the sea, and thrown up by the sea, can be reclaimed by the owner, with observance of the legal prescriptions, existing on that subject.

SECOND SECTION.

Of the manner, in which property is acquired.

635. Property in things cannot be acquired in any other way, than by appropriation, by accession, by prescription, by legitimate or testamentary succession, and by transfer or delivery, by virtue of a legal title of transfer of property, proceeding from one, who was entitled to dispose of the property.

636. Moveable things, which belong to no one, become the property of him, who was the first to appropriate them.

637. The right to appropriate game or fishes belongs, exclusively, to the proprietor of the ground, where the game is found, or of the

water in which the fishes are found, saving the rights acquired by third parties, of which they have at present the enjoyment, and without prejudice to general ordinances and local enactments existing on this subject.

638. Property in a treasure belongs to him, who has found it on his own ground.

If the treasure is found on the ground of another, the one half belongs to the finder, and the other half to the proprietor of the ground.

By a treasure is understood, every thing hidden or buried, in which no one can prove his right of property, and which has been discovered by a mere chance.

639. Everything united to a thing, or which constitutes one body with it, belongs to the proprietor, according to the rules established in the following articles.

640. Large and small islands, and accumulations of mud, formed in rivers not navigable and not admitting floats, belong to the riparian proprietors on the side, where they have formed themselves. If the island has not formed itself on one side only, it belongs to the proprietors of both shores, divided by a line, supposed to be drawn through the middle of the river.

641. If a stream or river by forming a new arm, cuts through the land of a proprietor, situated on the shore, and thereby forms an island, such proprietor retains the property of his land, although the island had formed itself in a river navigable and admitting floats.

642. Property in streams and rivers imports also the property of the ground, over which the water runs.

643. If a stream or river takes a new course, abandoning its ancient bed, the proprietors of the lands, which they have lost thereby, take possession of the abandoned bed, by way of indemnity, each in proportion to the land, which he has lost.

644. Temporary inundation of a stream or river shall cause neither acquisition nor loss of the property.

645. The accumulations of mud and accretions, which grow naturally, gradually and imperceptibly to the lands, bordering on a running water, are called alluvions.

Alluvion is for the benefit of the riparian proprietors, without regard, whether the title of ownership contains mention or not of the extent of the lands; saving the general ordinances and local enactments regarding foot and tow-paths.

646. The disposition of the second part of the preceding article is also applicable to alluvions, which take place on the shores of navigable lakes.

The same disposition is finally also applicable to accretions and washes of the sea on the strands and on the shores of rivers, where there is ebb and flow, whether the shore belongs to the country or private individuals or corporations.

647. Alluvion does not take place in respect of ponds.

The proprietors of these, preserve always the land, which the water covers when it has come to such a height, that the pond discharges itself, although the volume of water may again decrease.

In like manner and reversely, the proprietor of a pond acquires no right on the land situated on the shore, which may happen to be covered by his water, in the event of an extraordinary flood.

648. It shall not be considered alluvion when a piece of land is carried away suddenly by the violence of the stream, from one land and thrown against the other, provided the proprietor claims his right within three years from the occurrence.

After this interval, such piece of land carried away and not reclaimed, becomes also the property of him, against whose land it was thrown.

649. Every thing planted or sown on a heritage, belongs to the proprietor of the ground.

650. Every thing built on a heritage, belongs to the proprietor of the ground, provided the building be united to the ground ; saving the modifications contained in articles 652 and 653.

651. The proprietor of the ground, who has built, with materials which do not belong to him, must pay the value thereof ; he can be condemned to the compensation of costs, damages and interests, if there are terms for such ; but the owner of such materials has no right to remove them.

652. When any one has erected works, with his own materials, upon the land of another, the proprietor of the ground has a right either to retain the building or to oblige the other to remove it.

If the proprietor of the ground demands that the building be removed, the demolition shall take place at the expense of him, who has made the work, and he, the latter, can even be condemned to the compensation of costs, damages and interests.

If on the contrary the proprietor of the ground desires to retain the building, he shall be bound to pay the value of the materials, and the price of the work, without however any regard being paid to the augmentation in value of the heritage.

653. When the building is made by a possessor in good faith, the proprietor cannot demand that it be removed ; but he has a choice, either to pay the value of the materials and the price of the work, or to pay a sum of money proportionate to the increased value of the heritage.

654. The three above articles are also applicable to plantations and sowings.

655. He, who from a material, which does not belong to him, makes an object of a new description, becomes the proprietor of such object, provided he pays the price of the material, and compensates the costs, damages and interests, if there be terms for such.

656. When the new object is produced without human agency, and by the accidental mixture of various materials, belonging to

different proprietors, such new object becomes then a thing in common among all the proprietors, in proportion to the value of the materials, which originally have belonged to each of them.

657. If the new object is produced by the mixture of various materials, belonging to different proprietors, and by the act of one of these proprietors, the latter becomes the proprietor thereof, under obligation of paying to the others the value of the materials, with compensation of costs, damages and interests, if there are terms for such.

658. When in the cases provided for in the two preceding articles, the materials can be conveniently separated, each one shall be at liberty to reclaim what belongs to him.

659. Property is acquired by prescription, after one has possessed a thing during the period of time, which the law determines, and according to the conditions, and distinctions, prescribed in the seventh title of the fourth book.

660. The manner in which property is acquired by legitimate succession or testamentary inheritance, are treated of in the eleventh and twelfth title of this book.

661. The delivery of moveable things, incorporeal things excepted, takes place by the simple surrender, made by the proprietor or in his name, or by handing over the Keys of the building, where those things are to be found.

The delivery is not required, when the purchaser has already the thing in his power, by virtue of another title.

662. The delivery of active debts, not payable to bearer, and other incorporeal things, takes place by means of an authentic or private act, by which the rights on those objects are transferred unto another.

This transfer has no consequence in respect of the debtor, except from the moment that it has been notified to him, or that he has accepted or acknowledged the transfer in writing.

With regard to stocks and active debts to bearer, the surrender shall be accounted delivery.

663. The delivery of inscriptions on the ledger of the national debt, takes place according to the rules and ordinances established on that subject.

The delivery of individual actions in companies, takes place according to their bye-laws, and in default of stipulations to that effect, in the manner as prescribed in the Commercial Code on that subject.

664. The dispositions of the two preceding articles do not invalidate the laws and usages in commercial matters.

665. The delivery or transfer of immoveable things takes place by the transcription of the act in the public registers, destined for this purpose.

The acts, by which immoveable things are alienated, divided or allotted, likewise those, by which real rights on immoveable things are established or transferred, must be passed in authentic form, under penalty of nullity.

If the act contains subjects or transactions, which do not pertain to the thing, it suffices to have by authentic extract, the transcription of all that pertains to such thing; provided in such case, either at the time of making the extract, before the notary and witnesses, or by a private declaration to be written on the extract, the parties declare to give their consent, that the transcription shall take place according to such extract.

FOURTH TITLE.

OF THE RIGHTS AND OBLIGATIONS BETWEEN PROPRIETORS OF NEIGHBOURING HERITAGES.

666. There exists between the proprietors of neighbouring heritages rights and obligations, which proceed, either from the natural situation of the heritages, or from the dispositions of general ordinances or local enactments.

667. General ordinances and local enactments regulate the rights and obligations of the proprietors of neighbouring heritages, in respect of water-course.

668. He who possesses a spring on his heritage, may make use of it as he thinks fit, saving the right which the proprietors of heritages situated lower, may have acquired by any title, or by prescription, according to article 737.

669. The proprietor of the spring may not change the course thereof, when it supplies the inhabitants of a town, village or hamlet with water for their necessary use.

In such case the proprietor is entitled to an indemnity to be fixed by experts, unless the use of the water were obtained legally or by prescription.

670. He, whose property is situated on the shore of a streaming water, not belonging to public domain may use that water in its passage for the irrigation of his heritage.

He, whose heritage is intersected by such water, is at liberty to make use of it, even within the space, through which the water runs, but on condition of restoring the water to its natural course, at the boundary of his heritage.

671. When a dispute arises between proprietors, to whom such waters may afford any utility, the judge in deciding the matter, must try to reconcile the interest of agriculture with the inviolability of the right of property, and at all events, observe the general ordinances and local enactments in respect of the course, the elevation and the use of the water.

672. Every proprietor can compel his neighbour to separate their contiguous properties.

The separation shall be made at their common expense.

673. Every proprietor may enclose his heritage, saving the exceptions made in article 707.

General ordinances and local enactments regulate the cases, in which the enclosure is obligatory.

674. All walls, which serve as separation between buildings, landed estates, court yards, are accounted common walls, unless there exists a title or mark which indicate the contrary.

If the buildings are not equally high, the party-wall is only considered common, to height of the least elevated building.

675 The mark, that a party-wall is not common consists, among others of the following :

1. That the summit of the wall is straight and perpendicular on one side with its base, and on the other side presents an inclined plane ;
2. That the wall supports or bears a building or a terrace, without there being on the other side any building or other works ;
3. That in building the wall, either a coping, or stone ridges or projecting stones have been placed on the one side only.

In such cases the wall is considered to belong exclusively to the proprietor, on whose side the building, the terrace, the ridges and projecting stones, or the gutter of such copings are found.

676. The repairs and rebuilding of the common party-wall shall be at the charge of all those, who have a right on the wall, in proportion to the right of each.

Every joint-proprietor can relieve himself from his obligation of contributing towards the expenses of repairs and rebuilding, by abandoning his right of joint-proprietor on the wall to be rebuilt or repaired, provided the party-wall supports or bears a building, belonging to his neighbour.

677. Every joint-proprietor is at liberty to build against the common wall, and to place in it, to the half of its thickness, beams, joists, cramps and other iron or wooden works, provided the wall itself does not suffer any injury thereby.

678. Every joint-proprietor may cause the party-wall to be built higher, but he alone must bear the expenses of such elevation likewise the repairs of the elevation above the height of the common party-wall, and furthermore the compensation of damage, caused by the weight, in proportion to the charge, and according to the value.

If the common party-wall is not in condition to bear the additional building, he, who desires to elevate it. must cause it to be entirely rebuilt at his own expense, and the excess of thickness must be taken from the ground on his own side.

679. Every joint-proprietor of a common party-wall is at liberty to lay a gutter on the portion, which belongs to him, and to let the water run, either on his heritage or on the public way, when such is not prohibited by general ordinances or local enactments.

680. The joint-proprietor of the wall, who has not contributed towards the elevation, can acquire the joint-property of such elevation, by paying half of the expenses defrayed, likewise half of the value of the ground, if any has been used for the widening of the wall.

681. No wall can be rendered common without the will of its proprietor.

682. None of the joint-proprietors is at liberty, without the consent of the other, to make any depth or hollow in the common wall, neither to apply or lean any work against it.

In the cases provided for by articles 677 and 678, the joint-proprietor can demand, that the necessary means be contrived by experts, in order that the new work shall not cause any injury to his right.

If the new work has caused injury to the property of the neighbour, he must be indemnified for it; but the damage occasioned to the embellishments of the party-wall shall not be considered in appraising the indemnity.

683. In towns and closely built suburbs, and in villages, every one can compel his neighbour to contribute to the construction or putting up of enclosure, serving as separation of their houses, open yards and gardens.

The manner of enclosing, and the height of the enclosure shall be regulated according to general ordinances and local enactments or usages.

684. Each of the neighbours may erect at his own expense in lieu of a fence in common, a wall in common, but not at all a fence in lieu of a wall.

685. None of the neighbours may, without the consent of the other, make any window or aperture in the common party-wall, in any manner what soever. He may however do this in that portion of the wall, which he raises higher at his own expense, provided this takes place immediately at the time of building, in the manner as indicated by the two following articles.

686. The proprietor of a wall which is not common, joining immediately to the heritage of another, may make in this wall lights or windows, provided with close iron rails and with stationary sashes.

The rails shall not be allowed to be further apart from one another, than one decimeter.

687. These windows or apertures may not be made any lower than twenty five decimeters above the floor or basement of the chamber, which is desired to be lighted when it is the ground floor, and not lower than twenty decimeters above the floor for the upper stories.

688. One may not have over the enclosed or unenclosed heritage of his neighbours, any direct views, neither windows, from which there is a view on the heritage of another, nor balconies or other similar projecting works, unless a distance of twenty decimeters be left between the wall, in which such works are made, and the heritage.

689. Aside or obliquely one may not have views over the heritage of his neighbour, unless at a distance of five decimeters.

690. The distance, mentioned in the two preceding articles, is calculated from the exterior basement of the wall, in which the aperture is made, and if there are balconies or similar projecting works, from their exterior edge, to the boundary line of the two heritages.

691. The dispositions, contained in articles 674 to 690 are applicable to all wooden enclosures, serving as separation between buildings, open yards and gardens.

692. When it is necessary for the reparation of a building, to place any stages on the land of the neighbour, or to pass over it, in order to carry materials, the proprietor of such land is bound to tolerate it, saving indemnity, if there be terms for such.

693. No one is at liberty to let water or foul matter run through the gutters of another's heritage, unless he may have acquired the right thereto.

694. All buildings, walls, fences or other separations, which threaten to fall in, either through age, or on any other account, and which endanger the neighbouring heritage, or hang over it, must be demolished, rebuilt or repaired, on the first intimation of the proprietor of the neighbouring heritage.

695. He who causes a well, a sink or a privy to be dug near a wall, common or not common ; who wishes to build there a chimney, or a hearth, an oven or a furnace ; who wishes to build a stable or manure deposit against it, or to erect against such wall a magazine or store room of salt, or a receptacle of corrosive substances ; or wishes to make against it other injurious or dangerous works, is bound to leave or to make the space, prescribed by ordinances, enactments or usages in those respects, or to erect all such works as are prescribed by those regulations and usages, in order to avoid all injury to the neighbouring heritages.

696. Cisterns, wells, privies, sinks, gutters and the like, common between neighbouring heritages, must be maintained cleared or cleaned at the expense of the proprietors.

697. The clearing of privies in common must take place in turns, now over the one, and then over the other heritage.

698. All trenches or ditches between two heritages, are presumed to be common, if there exists no title or mark of the contrary.

699. It shall be considered as a mark, among others, that the trench or ditch is not common, when the bank or earth thrown up, is found only on one side of the trench or ditch.

In such case the trench or ditch is considered to belong entirely to the one, on whose side the earth is found to be thrown up.

700. The common trenches or ditches must be maintained at joint expense.

701. Each of the bordering proprietors may fish, navigate and water his animals in the common trenches, wells, inland waters, bays or ditches, and draw water therefrom for his use.

702. Every hedge, which separates two heritages from one another is presumed to be common, unless there may exist a title, possession, or mark of the contrary.

The trees, which are in a common hedge, are common, like the

hedge itself. None of the co-proprietors has however a right to demand, that the trees be felled, as long as they are alive.

Every co-proprietor can compel his neighbour to plant in the common hedge, for joint account, other trees in the room of such as died or fell down.

703. One neighbour can compel the other to plant new hedges at joint expense, if the former, having been common, have served to indicate the line of separation between the two heritages.

704. It shall be considered as a mark, among others, that the hedge is not common when only one of the heritages is enclosed.

705. It is not allowable to plant trees of lofty trunk or hedges, except within the line of separation; saving the dispositions of general ordinances and local enactments, regarding the planting along roads and paths.

706. A neighbour has the right to demand, that the trees and hedges, planted on or outside of the line of separation, be uprooted.

He, on whose heritage the branches of the trees of his neighbour hang over, can compel the latter to cut off such branches.

If the roots of the trees advance on his heritage, he has a right to cut them there away himself; he may also cut off the branches himself, if the neighbour has refused to do it, on his first intimation, provided he does not tread on the property of the neighbour.

707. The proprietor of a piece of land or heritage, which lies so inclosed, between other lands, that it has no egress to the common road, or common passage by water, is entitled to claim from the proprietors of the neighbouring lands that they shall indicate to him a passage for the use of his land or heritage, under obligation of an indemnity, proportionate to the damage caused thereby.

708. This passage must commonly be taken on the side, where the egress is shortest from this piece of land or heritage to the common road or common passage by water, in such way however, that in preference always that direction shall be taken, which will cause the least injury to the land, over which the passage is granted.

709. If the right of indemnity, mentioned in the conclusion of article 707, be lost by prescription, the passage shall nevertheless continue to exist.

710. The passage ceases from the moment that it is no longer indispensable, by a cessation of the circumstances mentioned in article 707, and one cannot avail himself of prescription, however long the passage may have existed.

711. Footpaths, droves or roads, common to several neighbours, and which serve them as a passage, cannot, but with common consent be changed in place, destroyed or appropriated to any use, other than to which they have been intended.

712. The rights and obligations established for public utility on the subject of making or repairing roads, dikes and other public works are regulated by general ordinances and local enactments.

FIFTH TITLE.

OF SERVITUDE.

FIRST SECTION.

Of the nature and different sorts of servitudes.

713. Servitude is a charge imposed on an heritage for the use and benefit of an heritage, belonging to another proprietor.

It may not be established, either to the charge, or to the benefit of one person.

714. All servitudes consist in the obligation of suffering something, or not to do something.

715. Servitude does not establish any pre-eminence of one heritage over the other.

716. Servitudes are continuous or discontinuous.

Continuous servitudes are those, of which the use continues or can continue, without requiring thereto the action of man; such are water courses, the right of gutters, views and others of the kind.

Discontinuous servitudes are those, which require man's action for their exercise, such as the right of way, of drawing water, pasture and others of the sort.

717. Servitudes are apparent or non-apparent.

Apparent servitudes are those, which are manifested by external works, such as a door, a window, an aqueduct and the like.

Non-apparent are those, which have no external sign of their existence, like the prohibition of building on an heritage, or of building beyond a determinate height, the right of pasture, and others which require man's action.

718. On rebuilding a wall or an edifice, the active and passive servitudes continue in respect of the new wall or of the new edifice, without they being however increased, and provided the rebuilding be done before prescription of the servitude takes place.

719. He who has a right of servitude of view or of light, may make as many windows or lights as he thinks proper; but after having built, or made use of his right, he may not increase their number in the future.

By light is understood, only the necessary light, without view.

720. Every one is at liberty to build as high as he thinks fit, provided the elevation of a building be not prohibited in favour of another heritage.

In such case the proprietor of the dominant heritage has the right to prevent, or cause to be removed, every construction or elevation prohibited by the title.

721. By the servitude of water course and drip is understood only the right of causing clean water to run out, but not filthy matter.

722. The servitude of the right of gutter is a right of causing water and filthy matter to run out.

723. The proprietor of an heritage, who has the right of inserting beams and anchors in the wall of another, is at liberty to lay new beams and cramps in the room of those which have decayed ; but he may not augment their number, neither change their positions.

724. He, who has a right to navigate on the water of a neighbouring heritage, must contribute towards the costs, which are necessary in order to keep the water always navigable, unless he may prefer to relinquish his right.

725. The servitude of footpath is the right of passing on foot over the land of another ;

That of riding or drove is the right of riding on horseback or driving cattle over it ;

That of way is the right of riding over it with a wagon, a carriage, etc.

If the width of the footpath, drove or way is not specified in the title, it shall be regulated according to ordinances, enactments or local usages.

In the servitude of riding or drove, that of footpath is tacitly understood, and in the servitude of way that of riding, drove and footpath.

726. The servitude of conduit of water is the right of conducting water from or over any neighbouring heritage to one's property.

727. He, to whom a servitude is due, has a right to make all such works, as are necessary for the use and preservation of that servitude.

These works are at his own expense, and not at the expense of the proprietor of the servient heritage.

728. In case the proprietor of the servient heritage is charged in the title with the construction of works necessary for the use and preservation of the servitude, he can always rid himself of this charge by resigning to the proprietor of the estate, to which the servitude is due, such portion of the servient heritage, as is required for the enjoyment of the servitude.

729. If the dominant heritage happens to be divided the servitude remains due for each portion without however aggravating the condition of the servient heritage.

Thus, if it regards a right of way, all the co-proprietors of the divided heritage shall be obliged to exercise that right by the same path, as before the division.

730. He who has a right of servitude, can only use it according to his title, and in default of title, according to ordinances, enactments or local usages, and in all cases in manner the least burdensome.

He may not effect any change, either on the servient, or on the dominant heritage, by which the condition of the first could be aggravated.

731. The proprietor of the servient heritage can do nothing, which may tend to diminish the use of the servitude, or to render it less commodious.

He may not change the condition of the place, neither transport the exercise of the servitude to a place, different from that, in which the servitude was originally established, unless the change can be effected without injury to the proprietor of the dominant heritage.

732. He, who has a right of servitude is considered to have every thing, which is necessary, to make use thereof, in manner the least burdensome to the proprietor of the servient heritage.

Thus the right of drawing water from another's source imports necessarily the right of passage to the source, over the servient heritage.

733. If the servient heritage happens to be divided, each portion remains charged with the servitude, for as much as is necessary for its exercise.

SECOND SECTION.

In what manner servitudes are established.

734. Servitudes are established, either by a title, or by prescription.

735. The title of acquisition of a servitude must be transcribed in the public registers, destined for that purpose.

736. Continuous and apparent servitudes can be acquired as well by prescription as by title.

737. Prescription does not commence to run for the proprietor of a heritage, situated lower, who makes use of the water source of a heritage, situated higher, except from the moment, that he shall have made and completed such external works, as are intended to facilitate the fall or course of the water on his property.

738. Continuous and at the same time non-apparent servitudes, likewise those discontinuous, whether they be apparent or non-apparent can only be established by a title.

The enjoyment, even during immemorial time, is not sufficient to acquire them.

739. When it is proved, that heritages, at present separate from one another, have formerly belonged to the same proprietor, and that he has placed them in such a state, from which a continuous and apparent servitude has resulted, this destination serves in stead of a title of servitude.

740. If the proprietor of two heritages, between which, before his acquisition of them, there existed an apparent sign of servitude, disposes of one of these heritages, without the agreement containing any stipulation relative to this servitude, it shall continue to exist, whether actively or passively, in favour or to the charge of the alienated heritage.

741. One of the co-proprietors of an heritage can by his sole action, without the knowledge of the others, acquire the right of servitude for their joint possessions.

THIRD SECTION.

In what manner servitudes are extinguished.

742. Servitudes are extinguished when the things are in such a state, that it is impossible any longer to make use of them.

743. If the servient or the dominant heritage is not entirely lost or destroyed, the servitude continues to exist, according as the condition of the heritages will permit.

744. Servitudes, which are extinguished, on account of the cause, mentioned in art. 742, shall revive, when the things are reestablished in such a condition, that they can be used, unless a sufficient time have elapsed to cause prescription, according to article 746.

745. All servitudes are extinguished when the servient and the dominant heritages are united in the same hand; saving the disposition of art. 740.

746. Servitude is also extinguished, when no use is made thereof, in thirty consecutive years.

These thirty years do not commence to run but from the day on which a deed has been committed, manifestly and contrary to the servitude.

747. If however the dominant heritage has been placed in such a condition, as to render the exercise of the servitude impossible, prescription shall take place by the single expiration of thirty years, to be computed from the moment, that the heritage could have been reestablished in such condition, as again to render possible the exercise of the servitude.

748. The way in which one can make use of a servitude, is prescriptible, the same as the servitude itself, and in like manner.

749. If the dominant heritage belongs to several proprietors undividedly, the enjoyment of one of these proprietors, prevents prescription in regard of all the others.

SIXTH TITLE.

OF THE RIGHT OF BUILDING.

750. The right of building is a real right of having buildings, works, or plantations on the land of another.

751. He, who has the right of building can alienate and mortgage it.

He can impose servitudes on the things subject to the right of building, but only for the period, during which he has the enjoyment of that right.

752. The title of acquisition of the right of building, must be transcribed in the public registers destined for that purpose.

753. As long as the right of building continues, the proprietor of the ground cannot prevent the person, who has such right, of demolishing the buildings and other works, or of uprooting the plantations and removing them all. provided the latter has paid their price, at the time of acquiring the right of building, or otherwise has erected or made the buildings, works and plantations himself, and with this pro-

vision that the land shall be re-established in the state, in which it was, previous to the building or planting.

754. At the expiration of the right of building the proprietor of the ground steps into the property of the buildings, works and plantations, subject to the obligation of paying the value thereof, at this time, to the person who had the right of building, and the latter shall have the right of retention, until this payment shall be acquitted.

755. If the right of building is established on a land, upon which there are already buildings, works and plantations, the value of which has not been paid by the possessor of that right, the proprietor of the land shall take back all these objects, at the expiration of the right of building, without being bound to any indemnification on that account.

756. The ordinances of this title shall only be applicable, for as far as parties in their agreements have not deviated from them.

757. Amongst other causes, the right of building ceases :

1. By merger ;
2. By the perishing of the land ;
3. By prescription of thirty years ;
4. After expiration of the time, stipulated or fixed at the establishment of the right.

758. If no special stipulations or dispositions have been made, regarding the cessation of the right of building, the proprietor of the land may cause it to cease, but not sooner than after the expiration of thirty years, and provided he gives notice, by proper writ, at least one year before hand, to the person, who has the right of building.

SEVENTH TITLE.

OF THE EMPHYTEUTIC RIGHT.

759. Emphyteutis is a real right of having full enjoyment of an immoveable, belonging to another, under obligation of paying to the latter, as an acknowledgement of his property right, an annual rent, either in money, or in produce or fruits.

The title of acquisition of emphyteusis must be transcribed in the public registers, destined for that purpose.

760. The grantee (emphyteuta) exercises all the rights, which are attached to the property of the heritage, but he may not do anything, by which the value of the land could be diminished.

Accordingly he may not, among other things, dig or quarry stones, stonecoals, peat, clay or other similar sorts of soil, belonging to the heritage, unless the digging had already commenced, when his right originated.

761. The trees which die during the emphyteusis, or are thrown down, by an accident, are to the profit of the grantee, provided he plant others in their room.

He has likewise the free disposal of all plantations, made by himself.

762. The proprietor of the ground is not bound to any repairs.

On the contrary the grantee is bound to preserve the heritage, granted by emphyteusis, and to make the necessary repairs to it.

He may improve the heritage, by erecting buildings, or by cultivating and planting grounds.

763. He is at liberty to alienate and mortgage his right, and to impose servitudes on the heritage, granted by emphyteusis, for the period of his enjoyment.

764. At the expiration of his right, he can remove all such buildings erected, or plantations made by him, to which he was not obliged by virtue of the agreement; but he is bound to compensate for the damage caused to the land by such removal.

Nevertheless the proprietor has on those objects the right of retention, until the grantee shall have paid him his due in full.

765. The grantee has no right to demand from the proprietor of the ground, that he should pay the value of the buildings, works, constructions and plantations, what soever, which he, the grantee, has made and which are on the land, at the expiration of the emphyteusis.

766. To his charge are all taxes, imposed on the heritage, whether ordinary or extraordinary, or annual or such as are only paid once.

767. The obligation to pay the rent is indivisible, each portion of the land granted by emphyteusis being answerable for the whole rent.

768. The grantee cannot claim any exemption from the payment of the rent, either on account of diminution, or of an entire cessation of the enjoyment.

If however the grantee has been deprived, during five consecutive years, of the entire enjoyment, an exemption shall be due to him for the period of his privation.

769. For every transmission of the emphyteusis, or for the division of a community, no extraordinary payment is due.

770. At the expiration of the emphyteusis, the proprietor, has a personal action against the grantee, for the compensation of costs, damages and interests, caused by negligence and the want of preservation of the heritage, and for the rights, which the grantee, through his fault, may have allowed to become prescribed.

771. When the emphyteusis has ended by the expiration of time, it is not tacitly renewed, but it can continue to exist until further warning.

772. The grantee can be declared deprived of his right, on account of considerable damage occasioned to the property, or of grievously abusing it; without prejudice to the action for the compensation of costs, damages and interests.

The deprivation can also be pronounced on account of non-payment of the rent, during five consecutive years, and after the grantee shall have been admonished in vain, by proper writ, for the payment, at least six weeks before the commencement of the action.

773. The grantee can prevent the deprivation, on account of damage occasioned to the property, or abuse of enjoyment, by reestablishing the things in their former condition, and giving sufficient security for the future.

774. All the ordinances established by this title, shall only have effect, in as far as parties, in their agreements, have not deviated from them.

775. Emphyteusis ceases in the same manner, as prescribed in articles 757 and 758, regarding the right of building.

EIGHT TITLE.

OF GROUND-RENT.

776. By ground-rent is understood an indebtedness, either in money or in produce or fruits, which the proprietor of an immoveable establishes thereon, or reserves for his own benefit, or for the benefit of a third party, at the alienation or bequeathing of it.

The title of acquisition shall be transcribed in the public registers, destined for that purpose.

777. If a ground-rent has been established on an immoveable, the former proprietor, to whom the rent is due, has no right to reclaim the property, on account of non-payment of the rent.

778. The indebtedness of the ground-rent rests exclusively on the property itself, and in the event of a division, each portion remains liable for the whole rent, without in any case the individual possessor being answerable there for, in his other goods.

779. Ground-rents can always be redeemed, even when the contrary were expressly stipulated.

It is however permissive to determine the conditions of redemption, and even to stipulate that the rent cannot be redeemed until after the expiration of a determined period of time, provided not exceeding thirty years.

780. If the price for the redemption of the ground-rent has not been determined at the time it was established or if in that respect no agreement is made between the parties at the purchase of the redemption, it shall be regulated in the following manner.

For a ground-rent in money it suffices that the debtor lays down the sum obtained by multiplying the amount of the ground-rent with twelve and a half.

If the groundrent is not due in money, but in other objects, the price for the redemption consists in like manner, of twelve and a half times the annual contribution, and the value shall be regulated according to the agrestic market prices of the last ten years, on an average, and in default thereof, be determined by experts, to be appointed by the parties or by the judge.

781. The right of ground-rent is lost :

1. By merger, when the rent and the property of the land concur into the same hand ;
2. By mutual agreement ;
3. By redemption, in the manner indicated above ;

4. By prescription, when he, to whom the ground-rent is due, has allowed thirty years to run, without making use of his right;
5. By the perishing of the land.

Nevertheless this right is not lost by inundation, quarrying or digging of peat, when the soil again becomes dry by nature or by labour.

782. The dispositions contained in this title are only applicable to ground-rents, which shall be established or reserved, after the introduction of this Code.

NINTH TITLE.

OF USUFRUCT.

FIRST SECTION.

Of the nature of usufruct, and of the manner of acquiring it.

783. Usufruct is a real right of deriving the fruits from the thing of another, as if oneself were the proprietor, provided care being taken that the thing itself be preserved substantially.

784. When however things usable are comprised in the usufruct, it suffices that the usufructuary, at the termination of the usufruct, restore an equal quantity, quality and value, or pay the price, at which the things may have been estimated at the commencement of the usufruct, or may be estimated, according to their value at that time.

785. Usufruct can be established in favour of one or more particular individuals, in order to have the enjoyment thereof, either jointly, or in succession.

In case of enjoyment in succession, the usufruct shall only be enjoyed by those persons, who are alive at the moment that the right of the first usufructuary commences.

786. Usufruct is acquired by the law, or by the will of the proprietor.

787. The title of usufruct of an immoveable, must be transcribed in the public registers, destined for this purpose.

When it regards a moveable thing, the real right originates at the delivery.

SECOND SECTION.

Of the rights of the usufructuary.

788. The usufructuary has a right to enjoy all sorts of fruits, which the thing, whereof he has the usufruct, is capable of producing, whether the produce consist of natural, industrial or civil fruits.

789. Natural and industrial fruits, which at the commencement of the usufruct are yet hanging to trees or roots, belong to the usufructuary.

Those, which are in a similar state, at the period when the usufruct ceases, belong to the proprietor, without compensation, on either side, of the expenses for tillage and sowing; but saving such portion of the fruits, which either at the commencement or at the termination of the usufruct, may accrue to a farmer having a share therein.

790. Civil fruits are considered to accrue from day to day, and belong to the usufructuary, according to the duration of his usufruct, at whatsoever period they may be due.

791. The usufruct of an annuity confers also on the usufructuary, during the usufruct, the right of receiving the current rents.

If the annuity is payable in advance, the usufructuary is entitled to the full installment due during the usufruct.

He who has the usufruct of an annuity shall never be liable to any restitution.

792. If the usufruct comprises things, which without being immediately consumed, are deteriorated however gradually by use, such as clothing, linen, furniture, and the like, the usufructuary has a right to make use of them for such purposes, as they are calculated to serve, without however being obliged to restore them, at the expiration of the usufruct, in another state, than that in which they may then be, for as far as they are not impaired by the bad faith or fault of the usufructuary.

793. If the usufruct comprises underwood, the usufructuary shall have the enjoyment of it, provided he observe the order and quantity of cutting, conformable to the ordinary usage of the proprietors, without however the usufructuary or his heirs having any claim for indemnity, on account of having neglected during the usufruct, the ordinary cuttings, either of underwood, twigs or forest trees.

794. The usufructuary has likewise, provided he observe the seasons and the customs of the former proprietors, the enjoyment of those parts of the wood of tall trees, which are placed in regular cuts, whether such cuts are made periodically over a certain extent of land, or whether they are made of a certain number of trees, taken indiscriminately over the whole extent of the land.

795. In all other cases the usufructuary may not appropriate lofty trees.

He can however employ trees uprooted or broken down by accident, in order to make the repairs, to which he is bound.

He may even, for this purpose, when it is necessary, cause trees to be felled, but on condition of showing the necessity of such repairs, in presence of the proprietor.

796. The usufructuary may take from the woods stakes for vines and what is required to prop fruit trees and to maintain and cultivate the gardens.

He has no right to cut trees for fuel, but he is entitled to what the trees yield annually or periodically, all this however according to local usage or to the custom of the proprietor.

797. Trees which can be removed from a nursery-ground without injury to it, belong also to the usufruct provided the usufructuary, in replacing them, conform himself to local usage and the custom of the proprietor.

798. The usufructuary is bound to replace by others, fruit trees which die, or which are uprooted or broken down by accident.

799. The usufructuary can either exercise the right of his usufruct in person, or let the thing on lease or farm, or even sell, encumber or transfer the usufruct by gratuitous title.

However, either in case of personal enjoyment or in the event of letting on lease or farm, or of transfer, he must, with regard to this enjoyment, conform to the usages of the place, and the custom of the proprietors, without altering the destination of the thing to the detriment of the proprietor.

With regard to the duration of the lease or farming, he must also conform, in accordance with the different nature and destination of the things, to local usages, and the custom of the proprietors. In default of such usages or custom, houses and landed estates may not be leased for a period longer than two years.

800. All leases or farmings of immoveable goods, possessed in usufruct, contracted more than one year before the commencement of the lease or farming, may be annulled at the request of the proprietor, if the right of the usufructuary ceases within this period.

801. The usufructuary has the enjoyment of the augmentation, accruing by alluvion, to the thing, of which he has the usufruct.

He has, in the same manner as if he were proprietor, the enjoyment of the servitudes, and generally of all other rights, of which the proprietor can have enjoyment.

He enjoys accordingly the right of hunting and fishing.

802. He has also, in the same manner as the proprietors, the enjoyment of the mines, stone or coal-quarries and peat-bogs, which were in a course of working at the commencement of the usufruct.

803. The usufructuary has no right whatsoever on mines, stone- or coal-quarries and peat-bogs, not yet opened, and accordingly he may not dig coals, peat, or other minerals, when the mining or turfing is not yet commenced; unless his title shows the contrary.

804. The usufructuary has no right to the treasure, which may be found during the usufruct, by another, upon the heritage, of which he has the enjoyment.

When he finds the treasure himself, he may claim his part thereof, conformable to article 638.

805. The proprietor is bound to permit to the usufructuary, the enjoyment of the usufruct, without causing him any impediment therein.

806. The usufructuary cannot at the expiration of the usufruct demand any indemnity for improvements, which he may pretend to have made, although the value of the thing may have been augmented thereby.

Notwithstanding this, such improvements can be taken into consideration, at the estimation of the injuries, which may have been done to the thing.

807. The mirrors, pictures and other ornaments, which the usufructuary has put up, can be taken away by him or his heirs, provided the places be restored to their original state.

808. The usufructuary may exercise all real actions, which the law grants to the proprietor.

THIRD SECTION.

Of the obligations of the usufructuary.

809. The usufructuary takes the things in the state in which they are at the commencement of the usufruct.

He must return them, at the end of the usufruct, in the state, in which they are at that period, saving the dispositions of articles 806 and 807, and the indemnities, due to the proprietor, for damages occasioned.

810. The usufructuary must cause to be made, at his own expense, and in presence of the proprietor, or at least after having duly summoned him, an inventory of the moveable and a statement of the immoveable goods, which are subject to the usufruct. No one can be relieved of this obligation, in the act by which the usufruct is established.

The inventory and statement can be drawn by private act, if the proprietor is present.

811. The usufructuary must give personal or real security, sanctioned judicially, that he will make use of the thing, whereof he has the usufruct, as a good father of a family, without deteriorating or neglecting it, likewise that the goods will be restored, or their value, if it regards such goods, as treated of in article 784.

812. The usufructuary can be relieved of his obligation to give security, in the act by which the usufruct is established.

Parents, who have the legal usufruct of the goods of their children, likewise those who have sold their property or given it by donation, with a reservation of usufruct, are not bound to give security.

The same is applicable also to the usufructuary of things, which are placed under the administration of others, saving as far as regards these, the dispositions of article 816.

813. As long as the usufructuary does not give security, the proprietor has a right to administer himself the thing subject to usufruct, provided he gives security on his part. In default of this latter, the immoveable goods shall be let on lease or farm, or placed under the administration of a third party; sums of money, included in the usufruct, shall be placed out, and provisions and other things, which cannot be used without being consumed, shall be sold, in order to place out likewise the proceeds thereof.

The interests or these sums of money, likewise the rents of leases and farms belong to the usufructuary.

814. If the usufruct consists wholly or partly of moveable goods, which diminish by use, the usufructuary does not lose, in default of giving security, the enjoyment of such goods, provided he declare under oath, that he could not find security, and promise that he will restore the goods, at the expiration of the usufruct.

Nevertheless the proprietor may demand that only such portion of the moveable goods be left to the usufructuary, as are necessary for his use, and that the remainder be sold and the price placed out, as is said in the preceding article.

815. By the delay in giving security, the usufructuary is not deprived of the fruits, to which he may have claim; they are his due from the moment at which the usufruct has commenced.

816. Those, who are appointed to administer the goods, subject to usufruct, are bound, before assuming their administration, to give personal or real security, sanctioned judicially.

817. The administrators are bound to render account and justification every year to the usufructuary, likewise to pay the balance sum of the account.

At the cessation of their administration they are bound to render account and justification, to the proprietor as well as to the usufructuary.

The proprietor, who has the administration of the goods, in accordance with the first part of article 813, is bound, in the same manner to account to the usufructuary.

818. The Administrators can be dismissed for the same reasons as guardians, likewise on account of neglect in complying with the obligation, imposed on them by the first part of the preceding article.

819. If, for whatsoever reason, the administration ceases, the usufructuary returns into all his rights.

820. The usufructuary is only bound to make the repairs for preservation.

Substantial repairs remain to the charge of the proprietor, unless they may have been caused by the neglect of ordinary preservation, since the commencement of the usufruct; in which case the usufructuary is also bound to them.

821. Are considered substantial repairs :

Those of main walls and vaults;

The reparation of beams and entire roofs;

The total reparation of dikes, masonwork dams and waterworks, likewise that of buttresses and party walls.

All other repairs are considered as ordinary preservation.

822. With deviation from the disposition of article 820, the usufructuary of a plantation is bound to make the substantial repairs as well as those for preservation.

823. Neither the proprietor nor the usufructuary is bound to rebuild, what falls down through age or is destroyed by accident.

824. The usufructuary is bound, during his enjoyment, to take for his account all annual and ordinary charges of the heritage as ground-rents, taxes, and others, which are ordinarily considered as charges on the fruits.

825. With regard to the extraordinary charges, which may be imposed on the property, during the usufruct, the proprietor is bound to pay them ; but the usufructuary is bound to compensate him the interest thereof, during the usufruct.

If the usufructuary has advanced these charges, he may reclaim them at the expiration of the usufruct, but without any interest.

826. He who has a general usufruct, or an usufruct by a general title, must pay the debts jointly with the proprietor, in the following manner :

The value of the thing subject to usufruct is estimated ; after this, in proportion to that value, the amount is fixed, which the thing must contribute towards the payment of the debts.

If the usufructuary desires to advance the sum, which must be contributed by the thing, the capital must be refunded to him ; without any interest, at the expiration of the usufruct.

If the usufructuary does not desire to make this advance, the proprietor has a choice, either to pay this sum, in which case the usufructuary becomes his debtor during the usufruct for the interests, or to encumber or sell a portion of the goods, subject to usufruct, to the amount which must be contributed.

827. He, who has an usufruct by a particular title is not bound to pay the debts, for which the heritage, subject to usufruct, is mortgaged.

If he pays them, in order to prevent the forcible expropriation of the heritage, he shall have his recourse against the proprietor.

828. A life-annuity or alimentary annual pension, bequeathed by a testator, must be acquitted in its entirety by him, to whom the entire usufruct is bequeathed ; and by him, to whom only a portion of the usufruct is left, in proportion to his enjoyment, without any reclamation on the part of either of the two.

829. The usufructuary is only bound to the expenses of lawsuits, which regard his usufruct, and to all other condemnations, to which such suits may give rise.

If the difference concerns the proprietor and the usufructuary at the same time, and they are both involved in the suit, they shall contribute to the expenses, in proportion to their reciprocal interests, to be determined by the judge.

830. If, during the usufruct, a third person permits himself any usurpation on the heritage, or otherwise attempts to curtail the rights of the proprietor, the usufructuary is bound to give information thereof to the proprietor ; in default of this he is responsible for all damage which may result therefrom to the proprietor, in the same manner as he would be bound to compensate for the injury, committed by himself, or by those for whom he is answerable.

831. When the goods are placed under the administration of third parties, the Administrators are bound, under penalty of compensation of costs, damages and interests, to protect the rights of the proprietor, and those of the usufructuary.

They may not appear in law for the proprietor or the usufructuary, either as plaintiff or as defendant, without being authorized thereto by him, whom it concerns.

832. If a flock of animals, over which an usufruct has been given, perishes entirely by accident or by disease, and without the fault of the usufructuary, the latter is only bound to account to the proprietor for the hides or their value.

If the flock has not entirely perished, the usufructuary is bound to supply the number of dead animals from the increase.

833. If the usufruct is not established on a whole flock, but on one or more animals, and one or more of them happens to die, without the fault of the usufructuary, he is not bound to supply them, or to pay for their value, but he must only return the hides or the value thereof.

834. The usufructuary of a vessel is bound to have her insured, in the event of a foreign voyage. In default of this he is responsible for all damages, which may result there from to the owner.

FOURTH SECTION.

How usufruct ceases.

835. Usufruct ceases :

1. By the death of the usufructuary ;
2. When the time for which, or the conditions subject to which, it has been granted, shall have expired or been fulfilled ;
3. By merger, when the naked property and the usufruct have come into one and the same hand ;
4. By cession of the usufructuary in favour of the proprietor ;
5. By prescription, when the usufructuary has not availed himself of his right during thirty years ;
6. By the total loss of the thing, on which the usufruct was established.

836. Usufruct given in favour of several persons jointly, ceases only with the death of the last.

Usufruct in favour of a body corporate ceases by the dissolution of it.

837. Usufruct granted until a third person shall have arrived at a certain age, continues until such period, although this person died before the fixed age, saving the dispositions of the fourteenth title of the first book, regarding the legal usufruct of parents.

838. No usufruct can be granted to a body corporate for longer than thirty years.

839. If one part only of the thing subject to usufruct is destroyed, the usufruct is preserved for the remainder.

Inundation of the ground does not destroy usufruct, for as far as, according to the nature of the thing, the usufructuary be capable of exercising his right.

The usufruct revives in its entirety, after the ground shall have again become dry, by nature or by labour.

840. If the usufruct is established on a building only, and such building is destroyed by fire or any other accident, or if it has fallen down through age, the usufructuary has no right of enjoyment, either of the ground or of the materials.

If the usufruct is established on an immoveable, of which the building forms a part, the usufructuary remains in the enjoyment of the ground, and he may make use of the materials, either to rebuild what was destroyed, or to repair other buildings, which form part of the thing.

841. The usufruct of a vessel ceases, when it is not fit to be repaired.

The usufructuary has no right on the wreck or the remains.

842. The usufruct of a rent, active debt, or obligation does not cease by the redeeming of the capital.

The usufructuary has a right to demand the re-investment thereof to his benefit.

843. Usufruct can likewise cease by the abuse, which the usufructuary makes of his enjoyment, either by injuring the thing or by suffering it to fall to decay, for want of sufficient repair and preservation.

844. The judge can, in such cases, and according to circumstances, either pronounce the absolute extinction of the usufruct, or place the goods under the administration of a third party, or otherwise cause them to be delivered to the proprietor, with order to pay annually to the usufructuary a fixed sum, until the period at which the usufruct should have ceased.

If however the usufructuary, or his creditors, offer to redress immediately the abuse committed, and to give sufficient guarantee for the future, the judge shall be at liberty to maintain the usufructuary in the enjoyment of his rights.

845. The extinction of the usufruct does not cause a cessation of the contracts of lease, made according to article 799.

TENTH TITLE.

OF USE AND HABITATION.

846. The right of use and that of habitation are real rights, which are acquired and extinguished in the same manner as usufruct.

847. The obligation imposed on the usufructuary of giving security, of making statement and inventory, of enjoying as a good father of a family, and of restoring the thing, is also applicable to him, who has the right of use or of habitation.

848. The right of use and that of habitation are regulated according to the title, by which they are established; if in this title no provisions are made, regarding the extent of these rights, they shall be regulated according to the following articles.

849. He, who has the right of use on a heritage, is only at liberty to draw there from as much fruit, as he requires for himself and his family.

850. Things, which perish by use, cannot be the subject of the right of use; but if this right has been granted on such things, it shall be considered as usufruct.

851. The usager may neither cede nor lease his right to another.

852. In respect of animals, the usager has the right to employ them to do his work, and to use the milk, as much as required for the wants of himself and family, as also the manure; but he has not at all the benefit of the wool or the increase of the animals.

853. The right of use established on a heritage includes neither hunting, nor fishing, but the usager has the benefit of the servitudes.

854. In respect of a house, there exists no difference between the right of use and that of habitation.

He, who has the right of habitation in a house, may dwell there with his family, even though he were not married at the period, when such right was conferred upon him.

This right is confined to what is necessary for the habitation of the usager, and of his family.

855. The right of habitation may neither be ceded nor leased.

856. If the usager enjoys all the fruits of the heritage, or occupies the entire house, he is bound to bear, the same as an usufructuary, the expenses of cultivation, and the repairs for preservation, likewise the taxes and other charges.

If he enjoys only part of the fruits, or occupies part of the house, he must contribute towards these expenses and charges, in proportion to his enjoyment.

857. The use of woods and plantations, granted to a particular individual, only gives to the usager the right of making use of the dead wood, and of taking from the underwood as much as is required for himself and family.

ELEVENTH TITLE.

OF SUCCESSION INTESTATE.

FIRST SECTION.

General dispositions.

858. Succession only takes place by death.

859. If several persons, respectively called to the inheritance of each other, perish by one and the same accident, or on the same day without it being possible to know which of them died first, they shall be presumed to have died at the same moment, and there shall be no transmission of inheritance from the one to the benefit of the other.

860. To the inheritance are called by the law :

1. The legitimate and natural blood relations, according to the rules established hereafter;
2. In default of these, the surviving spouse.

In default of blood relations and of a surviving spouse, the goods escheat to the country, subject to the charge of paying the debts, for as far as the value of such goods be sufficient.

861. The heirs are seised *ipso jure* of the goods, rights and actions of the deceased.

If any dispute arises as to who is heir, and accordingly entitled to the seisin, the judge can order that the goods shall be placed under judicial sequestration.

The country must cause itself to be put in possession by the Judge, and is obliged, under penalty of the compensation of costs, damages and interests, to cause seals to be affixed in the succession, and inventory to be made, in the form as prescribed for the acceptance of successions under benefit of inventory.

862. The heir has an action to obtain the inheritance, against all those who are in possession of the entire succession, or of a portion thereof, whether under the title of heir, or without title, likewise against those, who fraudulently have ceased to possess.

He can institute this action for the whole, if he alone is heir, and for his portion, if there are more heirs.

This action tends to the surrender of every thing, that is found in the succession, under whatsoever title, with the fruits, revenues and indemnity, according to the rules, laid down in the third title of this book, regarding the revendication of property.

863. This action is prescribed by the lapse of a period of thirty years, counting from the day, on which the succession was opened.

864. In order to be able to succeed as heir, one must be in existence at the moment at which the succession is opened, with observance of the rule established in art. 3.

865. Are considered unworthy to be heir, and as such excluded from the inheritance:

1. He, who is condemned for having taken the life or attempted to take the life of the deceased;
2. He, who is convicted by judgment, of having brought calumniously against the deceased an accusation of an offence, against which an infamous punishment is threatened;
3. He, who by violence or force has prevented the deceased from making or revoking his last will;
4. He, who has suppressed, destroyed or falsified the last will of the deceased.

866. The heir excluded from the inheritance, for cause of unworthiness, is bound to restore all the fruits and revenues of which he has had the enjoyment, since the opening of the succession.

867. The children of a person declared unworthy, coming to the inheritance in their own right, are not excluded by the fault of their parents; but these are not in any case entitled to claim, over the goods of such succession, the usufruct, which the law grants to parents on the goods of their children.

868. Representation gives to the representing person the right to enter in the place, in the degree, and in the rights of him, who is represented.

869. Representation takes place to infinity in the direct descending legitimate line.

It is admitted in all cases, whether the children of the deceased come to the succession jointly with the descendants of a child previously dead, or whether all the children of the deceased, having died before him, the descendants of those children, who died previously, are related to one another in equal or unequal degrees.

870. There is no representation in respect of relations in the ascending line. The nearest in each of the two lines always excludes the one who is in a more remote degree.

871. In the collateral line, representation is admitted in favour of children and descendants of brothers and sisters of the deceased, whether they come to the succession jointly with their uncles or aunts, or whether, after the previous death of the brothers and sisters of the deceased, the inheritance devolve upon their descendants, related to each other in equal or unequal degrees.

872. Representation is also admitted in every succession of collateral relations, when, besides the one who is nearest of kin to the deceased, there exist also children or descendants of brothers or sisters of the deceased, who died previously; in which case they are entitled by representation to the inheritance, together with their uncles or aunts, grand-uncles or great-aunts.

873. In all cases where representation is admitted, the division is effected by stocks; if the same stock has produced several branches, the subdivision in each branch is again made by stocks, and among the persons in the same branch, the division is effected by heads.

874. No one can enter by representation for a living person.

875. A child does not derive from his parents the right of representing them, and one can even represent him, whose succession one has not wished to accept.

876. The law does not consider either the nature or the origin of the goods, in order to regulate the succession thereto.

877. All inheritances which fall, whether entirely or partly, to relations in the ascending or collateral line, are divided in two equal parts, of which one falls to the relations in the paternal line, and the other to those in the maternal line, saving the dispositions contained in articles 881, 882 and 886.

The inheritance can never devolve from one line to the other, except when no relation either in the ascending or collateral line, can be found in one of the two lines.

878. This first division being effected between the paternal and maternal lines, there is no further division between the several branches; but the moiety which fell to each line, belongs to the heir or heirs, in the nearest degree of relationship to the deceased, saving the case of representation.

SECOND SECTION.

*Of succession in the legitimate descending, ascending,
and collateral line.*

879. Children or their descendants inherit from their parents, grand-parents, or other ancestors, without distinction of sex or primogeniture and even when they are the issue of different marriages.

They inherit in equal portions by heads, when they are all in the first degree, and called in their own right; they inherit by stocks, when they all, or part of them, come by representation.

880. If the deceased has left neither descendants, nor brothers or sisters, the succession is divided in two equal portions between the relations in the paternal and those in the maternal ascending line, saving the disposition of art. 886.

The nearest in degree in the ascending line receives the moiety belonging to his line, with exclusion of all others.

Relations in the ascending line in the same degree, inherit by heads.

881. When the father and the mother of a person, who died without descendants, have survived him, each of them receives a third part of the succession, if the deceased has left only one brother or one sister, who receives the other third part.

The father and the mother inherit each a fourth part, if the deceased has left more brothers or sisters, and in this case the two other fourth parts accrue to these latter.

882. When the father or the mother of a person, who died without descendants, died before him, the survivor shall receive the moiety of the succession, if the deceased leaves only one brother or one sister; one third if he has left two; and one fourth part, if more brothers or sisters are left. The other portions accrue to the brothers and sisters.

883. In case of the previous death of the father and mother of a person, who died without issue, the brothers and sisters are called to the whole inheritance, with exclusion of the relations in the ascending line and other collaterals.

884. The division of every thing that accrues to the brothers and sisters, according to the dispositions of the preceding articles, is effected between them in equal portions, if they are all of the same bed; but if they are the issue of different marriages, that which they inherit shall be divided in two equal portions between the paternal and maternal lines of the deceased; the full brothers and sisters receive their portion in both lines, and those of half bed only in the line, to which they belong. If only half brothers or sisters, from one side alone, are left, they shall receive the whole succession, with exclusion of all other relations in the other line.

885. In default of brothers and sisters, and at the same time of relations in one of the two ascending lines, the succession devolves for one moiety on the surviving relations in the ascending line, and for the other moiety on the collateral relations in the other line, with the exception of the case mentioned in the following article.

In default of brothers and sisters and of relations in both the ascending lines, the nearest relations in each of the collateral lines are called to the succession, each for a moiety.

If in the same collateral line relations are found in the same degree, they share among themselves by heads, saving the disposition of article 872.

886. The surviving father or mother inherits alone the entire succession of his child, who died without issue, and without leaving brothers or sisters.

887. Under the denomination of brothers and sisters, appearing in this section, are always comprised the legitimate descendants of each of them.

888. Relations, beyond the twelfth degree to the deceased, do not inherit.

If in the one line no relations are found of the degree, in which they can inherit, the relations in the other line succeed to the whole inheritance.

THIRD SECTION.

Of succession, when there are natural children.

889. If the deceased has left lawfully acknowledged natural children, the succession shall be inherited in the manner as regulated in the three following articles.

890. If the deceased has left legitimate descendants, the natural children inherit one third of the share, which they would have had, if they had been legitimate; they inherit the moiety of the succession, if the deceased has left no descendants, but relations in the ascending line, or brothers and sisters or their descendants; and three fourths, if only relations in a more remote degree remain.

If the legitimate heirs are related to the deceased in unequal degrees, the nearest in the one line establishes the proportion of the share, due to the natural child, even in respect of those, who are in the other line.

891. In all the cases, provided for by the preceding article, the residue of the succession shall be divided in the manner as regulated by the second section of this title, among the legitimate heirs.

892. If the deceased has left no relation in the degree, capable of inheriting, the natural children shall obtain the whole succession.

893. In case of the previous death of a natural child, his legitimate children and descendants are entitled to claim the advantages granted to them by articles 809 and 892.

894. The above dispositions are not applicable to children begotten in adultery or incest.

The law awards to them only the necessary subsistence.

895. This subsistence shall be regulated according to the means of the father or mother, and to the number and quality of the legitimate heirs.

896. If the father or mother while living has secured to a child, begotten in adultery or incest, the necessary subsistence, such child cannot make any further claim whatsoever on the succession of his father or mother.

897. The succession of a natural child, who died without issue, accrues to the father or the mother, who has acknowledged him, or to each of them for a moiety, if he has been acknowledged by both.

898. In case of the previous death of the parents of a natural child, who has left no issue, the goods, which he has acquired from the succession of his parents, revert to the legitimate descendants of his father or mother, if such goods are yet found in kind in the succession; it is the same in respect of actions for revendication, if any exist, and of the purchase-money of the goods, if they have been alienated and this purchase-money is still due.

All other goods pass to the natural brothers and sisters or to their legitimate descendants.

899. The law does not grant to a natural child any right whatsoever on the goods of the relations of his parents, except in the case mentioned in the following article.

900. If one of those relations came to die, without leaving either relatives in the degree capable of inheriting, or a surviving spouse, the natural acknowledged child is entitled to claim the succession, to the exclusion of the country.

And if the natural child dies, without leaving either descendants, or parents, or natural brothers or sisters, or descendants of these, or surviving spouse, his succession belongs also, with exclusion of the country, to the nearest relations of his father or of his mother, who has acknowledged him; and if he has been acknowledged by both, the one moiety of his succession belongs to the nearest paternal relations, and the other moiety to the nearest relations from mother's side.

The division in both lines is affected according to the rules, prescribed in regard of ordinary succession.

TWELFTH TITLE.

OF LAST WILLS.

FIRST SECTION.

General dispositions.

901. The goods, which a person leaves at his death, belong to his lawful heirs, for as far as he has not legally disposed of them by last will.

902. A testament or last will is an act, containing declaration of what a person desires shall be done after his death, and which act he is at liberty to revoke.

903. Testamentary dispositions in regard of goods are either general, or by general title, or by particular title.

Each of these dispositions, whether made under the denomination of institution of heir, or under the denomination of legacy, or under any other denomination, shall produce its effect, according to the rules established in this title.

904. A testamentary disposition in favour of the nearest relatives, or the nearest of kin to the testator, without further indication, shall be considered made in favour of his heirs called by law.

905. A testamentary dispositon in favour of the poor, without other indication, shall be considered made in favour of all those who are needy, without distinction of religion, and who are supported by poor institutions, at the place, where the succession is opened.

906. Substitutions or *fidei commissa* are prohibited.

Accordingly, every disposition, by which the heir appointed or legatee is charged to preserve the inheritance or legacy, and to surrender it to a third party, for the whole or in part, is null and void, even in regard of the heir appointed or legatee.

907. From the substitutions, prohibited by the preceding article, are excepted those, which are permitted in the seventh and eighth sections of this title.

908. The disposition, by which a third party, or in case of his previous death, all his legitimate children, born already, or who shall be born as yet, are called to the whole or part of such portion of the inheritance or legacy, which the heir or legatee shall leave at his death, unalienated and not consumed, is no substitution prohibited.

The testator may not by such an institution or legacy prejudice his heirs, to whom a legitimate portion is due.

909. The disposition, by which a third party is called to an inheritance or legacy, in the event that the heir instituted or legatee does not receive it, is valid.

910. It is the same in respect of a testamentary disposition, by which the usufruct is given to one and the naked property to another.

911. A disposition by which the succession or legacy, or part thereof, is declared unalienable, shall be deemed not written.

912. If the wordings of a testamentary disposition are plain, they may not be deviated from by explanation.

913. If on the contrary the wordings of a testamentary disposition admit of several interpretations, the intention of the testator shall rather be inquired into, than to keep to the literal sense of the words, contrary to such intention.

914. In such case the wordings shall also be taken in the sense, which is most agreeable with the nature of the disposition and the subject thereof, and by preference, in such a manner, that the disposition shall have some effect or consequence.

915. In all testamentary dispositions, the conditions, which are unintelligible or impossible, or contrary to law and good morals, shall be deemed not written.

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916. A condition shall be accounted fulfilled, when he, who may have an interest in its non-fulfilment, has prevented the fulfilment.

917. Mention of a false motive shall be deemed not written, unless it may be apparent from the last will, that the testator would not have made the disposition, if he had had a knowledge of the falsity of the motive.

918. Mention of a motive, either true or false, but contrary to the laws or good morals, renders the institution of heir or the legacy null.

919. If an indivisible charge has been imposed upon several heirs or legatees, and one or more of them renounce the inheritance or legacy, or otherwise are incapable of receiving the bequest, he, who wishes to comply with the charge in its entirety, shall be at liberty to claim the portion left to him, and shall have his recourse against the succession, for what he may have paid for the others.

920. Last wills made in consequence of compulsion, deception or fraud, are null.

921. If by one and the same accident, or on the same day, have perished the testator and the heir or legatee, or he, who, in the event of a substitution permitted would have succeeded in the place of this latter, without it being known which of those, who perished in that way, died first, they shall be presumed to have died at the same moment, and there shall be no transmission of rights, by virtue of the last will.

SECOND SECTION.

Of the capacity of disposing by last will, or of receiving benefit therefrom.

922. In order to make or revoke a last will, one must be of a sane mind.

923. All persons can dispose by last will, and receive benefit therefrom, except such as are declared incapable thereto, according to the dispositions of this section.

924. Minors, who have not arrived at the full age of eighteen years, may not make last wills.

925. The capacity of the testator, shall be judged according to the state, in which he was, at the moment that the last will was made.

926. In order to be capable of receiving anything by virtue of a last will, one must exist at the moment of the testator's death, with observance of the rule, established in article 3.

This provision is not applicable to persons, who are called to receive benefit from any established institutions.

927. Gifts made by testamentary dispositions in favour of public or religious establishments, churches or poor institutions, have no effect, except for as far as the Governor will have granted to the directors of such institutions, the authority to accept them.

928. A spouse cannot receive any advantage by the testamentary disposition of the other spouse, if the marriage have been contracted without proper consent, and the testator died at a time, when the legality of the marriage could as yet be impeached in law, on that account.

929. The husband or the wife, who, having children from a previous marriage, contracts a second or subsequent marriage, shall not be at liberty to give by last will to his later spouse, but the least portion which one of the legitimate children receives, and without in any case, the disposition being permitted to exceed the fourth part of his goods.

930. The spouses cannot dispose, in regard of the goods, which are in community, further than of the share, which each of them has in the community.

If however a thing has been bequeathed out of the community, the legatee cannot claim it in kind, if that thing has not been allotted to the heirs of the testator.

In such case the legatee shall be indemnified from the share in the community, which accrued to the heirs of the testator, and in case of insufficiency, from the goods belonging to those heirs personally.

931. A minor although having arrived at the age of eighteen years, cannot make by last will, any disposition for the benefit of his guardian.

Having arrived at majority, he cannot by last will favour his guardian, until after the final account of the guardianship has been rendered and closed.

From the two cases hereabove mentioned are excepted the relations by consanguinity of the minor in the ascending line, who are or have been his guardians.

932. Minors cannot dispose by last will in favour of their teachers, governors or governesses, who live together with them, nor in favour of their instructors, male or female, with whom the minors are placed at board.

Are excepted herefrom the dispositions as a reward for services performed, made by way of legacy, with observance however as well of the means of the testator, as of the services, which were rendered to him.

933. Doctors in medicine or surgeons, apothecaries and other persons, practising medicine, who have attended a person, during the malady, of which he died, as also the ministers of religion, who have assisted him during that malady, cannot receive any benefit by the testamentary disposition, which such a person may have made in their favour, during the course of that malady.

Are excepted herefrom :

1. The dispositions as a reward for services performed, bequeathed by way of legacy, in the same manner as prescribed in the preceding article ;
2. The dispositions in favour of the spouse of the testator ;
3. The dispositions even general made in favour of relations by consanguinity until the fourth degree inclusive, if the deceased has not left heirs in the direct line ; unless he, in whose favour the disposition is made may be himself among the number of such heirs.

934. The notary who has passed a last will by public act, and the witnesses, who have been present at it, cannot receive anything of what may have been bequeathed to them by such last will.

935. If parents leave legitimate and also natural, but lawfully acknowledged, children, these latter shall not be permitted to receive by the testamentary dispositions of their parents, any more, than what is accorded to them in the eleventh title of this book.

936. Adulterers and adulteresses and their accomplices, cannot receive any benefit by the last will of each other, provided the adultery be established before the death of the testator, by a judicial judgment.

937. A testamentary disposition made in favour of one, who is incapable to inherit, is null, even when the disposition may be made in the name of an intermediary person.

As intermediary persons are accounted the father and the mother, the children and descendants, and the spouse of the person, who is incapable of inheriting.

938. He, who is condemned on account of having taken the life of the testator; he who has suppressed, destroyed or falsified the last will of the testator, or who by violence or forcible means has prevented the testator from revoking or altering his last will, shall not be permitted, neither his conjunct spouse nor his children, to receive any benefit by the last will.

THIRD SECTION.

Of the legitimate portion, and of the reduction of gifts, which would diminish that portion.

939. The legitimate portion is a part of the goods, which is accorded to the heirs at law in the direct line, and of which the defunct may not have disposed, either by gifts during life or by last will.

940. In the descending line, if the testator leaves but one legitimate child, this legitimate portion consists of the half of the goods, which the child would have inherited by succession intestate.

If two children remain, the legitimate portion of each child is two thirds of what he would have inherited by succession intestate.

In case the defunct leaves three or more children, the legitimate portion shall amount to three fourth parts of what each child would have had in the event of succession intestate.

Under the name of children are comprehended the descendants, in whatever degree they may be; these are however only counted in the place of the child, whom they represent in the succession of the testator.

941. In the ascending line the legitimate portion amounts always to the moiety of that, which according to law accrues to each relation in that line by succession intestate.

942. The legitimate portion of a natural, but lawfully acknowledged child consists of the moiety of that portion, which the law accords to him in the succession intestate.

943. In default of relations in the ascending and in the descending line, and of natural children lawfully acknowledged, the gifts made by acts during life, or by last will may comprise the totality of the goods of the succession.

944. When the disposition, made by act during life or by last will, consists of an usufruct or of a life-annuity, the amount of which infringes upon the legitimate portion, the heirs to whom this portion is accorded, shall have the option, either of executing this disposition, or of relinquishing the property of the disposable proportion to those benefited or the legatees.

945. The portion, of which one has the disposal, may be given away either in whole or in part, by act during life or by last will, to strangers, or otherwise to children or other persons, who are entitled to an inheritance; saving the cases, in which these latter are bound to restitution, according to the sixteenth title of this book.

946. The gifts or donations, made either during life, or by last will, which may infringe on the legitimate portion, shall be reducible at the opening of the succession, but only on the demand of those, to whom the legitimate portion appertains, and of their heirs or assigns.

Nevertheless those, to whom the legitimate portion appertains shall not be allowed to enjoy anything from this reduction, to the prejudice of the creditors of the deceased.

947. In order to determine the amount of the legitimate portion, a mass is formed of all the goods, which were present at the moment of the death of the donor or testator; to this is added the amount of the goods, which have been disposed of by gifts during life, calculated according to the state in which they were at the time of the gift, and their value at the moment of the death of the donor; after having deducted therefrom the debts, a calculation is made upon all those goods, as to how much, according to the relationship of those, to whom the legitimate portion appertains, the proportion amounts to, which they can claim, and from this is subtracted what they have received from the defunct, even with dispensation of restitution.

948. Every alienation of any goods, either under the charge of a life-annuity or with reservation of usufruct, made to one of the heirs in the direct line, shall be considered as a gift.

949. If the thing given be lost before the death of the donor, and without the fault of the donee, it shall not be included in the mass of the goods, upon which the legitimate portion is to be calculated.

The thing given shall be comprised in the mass, if on account of the insolvency of the donee, it cannot be recovered.

950. Gifts during life shall never be reducible, until after all the goods, which have been devised by last will, shall be found insufficient to secure the legitimate portion. When in such case a reduction of the gifts during life must take place, it shall be made by commencing with the last gift, and continue in this manner further back, from this one to the former.

951. The restitution of immoveables, which must take place pursuant to the preceding article, shall be made in kind, notwithstanding every disposition to the contrary. If however the reduction must be made on an immoveable, which cannot conveniently be divided, the donee, even when he is a stranger, shall have the right to pay in ready money the portion, which accrues to the legitimate heir.

952. The reduction of devises made by last will, shall be effected without any distinction between heirship and legacies, unless the testator have expressly commanded that any particular heirship or legacy should be acquitted in preference; in which case such heirship or legacy shall not be reduced, except in the event that the value of the other devises may not be sufficient to complete the legitimate portion.

953. The donee shall restore the fruits of the excess of the gift, over and above the disposable proportion, counting from the day of the donor's death, if the demand for reduction has been made within the year, and otherwise, from the day of such demand.

954. The immoveable goods, which must return to the succession, by the effect of reduction, are thereby freed of the debts or mortgages, which the donee has imposed on them.

955. The action for reduction or restoration can be prosecuted by the heirs against third parties, possessors of the immoveable goods, which form part of the donation, and have been alienated by the donees, in the same manner and in the same order as against the donees themselves.

This action must be instituted according to the order of the dates of the alienations, beginning with the last made alienation.

Nevertheless the action for reduction or restoration shall not take place against third parties purchasers, except in as far as the donee have not kept any other goods included in the gift, and these be not sufficient to acquit the legitimate portion in its entirety, and if the value of the goods alienated can not be recovered on his personal properties.

This action shall, in all cases, be forfeited by the lapse of three years, counting from the day on which the legitimate heir shall have accepted the inheritance.

FOURTH SECTION.

Of the form of last wills.

956. No last will can be made by two or more persons in the same act, either for the benefit of a third person, or under the title of a reciprocal or mutual disposition.

957. A last will can only be made, either by an olographic act or by a public act, or by a mystic or closed testament.

958. An olographic last will must be written throughout and signed by the hand of the testator.

It must be deposited by the testator with a notary.

The notary, assisted by two witnesses, shall immediately draw an act of deposit thereof, signed by him, together with the testator and the witnesses, either at foot of the last will, if it be handed to him open, or separately if the document be presented to him sealed; in which latter case the testator, in presence of the notary and witnesses, shall note on the cover and confirm this with his signature, that it contains his last will.

If the testator, by any prevention, which originated since the signing of the last will, or of the cover, cannot sign the cover or the act of deposit or both, the notary shall make mention thereof, and also of the cause of prevention.

959. Such an olographic last will, being received in deposit by the notary, conformably to the preceding article, has the same force as a last will made by public act, and is calculated to have been made on the day of the act of deposit, without regard to the date, which may be in the will itself.

960. The testator is at liberty at all times to demand his olographic testament back, provided to cover the responsibility of the notary, he causes the restoration to be established by an authentic act.

By the restoration the olographic testament is considered revoked.

961. By a document, simply private, written throughout, dated and signed by the testator, dispositions after death can be made, without further formalities, but solely and exclusively for the appointment of executors, for the arrangement of the funeral, for bequeathing legacies of clothing, of personal apparel, of particular ornaments, and of particular pieces of furniture.

The revocation of such a document can take place in the same private manner.

962. If such a document as alluded to in the preceding article, is found after the death of the testator, it shall be presented to the canton judge of the district, where the succession is opened; he shall open the document, if it is sealed and in all cases draw a proces-verbal of the presentation, and of the state of the document; he shall finally hand the document to a notary, in order to be deposited among his minutes.

963. An olographic last will, which is handed closed to a notary, shall be presented after the death of the testator, to the canton judge, who shall act, as prescribed in art. 968, in regard of closed wills.

964. A last will by public act, must be passed before a notary, and in the presence of two witnesses.

965. The notary must write, or cause to be written, the will of the testator, in plain wording as it is substantially stated to him by the testator.

If the statement be made without the presence of the witnesses, and the writing be prepared by the notary, the testator must before the reading of it can take place, state his will again in substance, in presence of the witnesses.

Hereupon the notary shall read the will in presence of the witnesses, and after this reading he shall question the testator whether that, what has been read, contains his last will.

If the will has been dictated in presence of the witnesses, and was immediately committed to writing, the same reading and questioning shall be done in presence of the witnesses.

The act must thereupon be signed by the testator, the notary and the witnesses.

If the testator declares that he cannot sign, or if he is prevented from so doing, this declaration and the cause of prevention shall also be mentioned in the act.

Express mention shall be made in the act of last will, of the observance of all these formalities.

966. When the testator desires to make a closed or mystic testament, he shall be bound to sign his dispositions, whether he has written them himself, or has caused them to be written by another; the paper which contains his dispositions, or the paper which serves as a cover, if a cover has been used, shall be closed and sealed.

The testator shall present it thus closed and sealed to the notary in the presence of four witnesses, or he shall cause it to be closed and sealed in their presence, and he shall declare that this paper contains his last will, and that this will either has been written and signed by himself, or has been written by another and signed by him. The notary shall draw an act of superscription thereof, which shall be written on that paper, or on the paper serving as a cover; this act shall be signed as well by the testator, as by the notary, together with the witnesses; and in case the testator cannot sign the act of superscription, on account of any prevention arising subsequent to the signing of the last will, the cause of such prevention shall be mentioned.

All the formalities to be observed in presence of the notary and witnesses must be complied with, without proceeding meanwhile to any other act.

The closed or mystic will shall remain deposited among the minutes of the notary, who has received the document.

967. In case the testator cannot speak, but is able to write, he may make a mystic last will, provided it be written throughout, dated and signed with his own hand; and provided he present it to the notary and witnesses, and write and sign at the head of the act of superscription in their presence, that the paper, which he presents to them, is his last will; after which the notary shall write the act of superscription, and mention therein, that the testator has written this declaration in presence of the notary and witnesses, and furthermore everything prescribed by the preceding article shall be observed.

968. After the death of the testator, the closed or mystic will, shall be presented to the canton judge of the district, where the succession is opened; the judge shall open this last will, and

draw a proces-verbal of the presentation and the opening of the will, likewise of the state in which it is, and afterwards return this document to the notary, who has made the presentation.

969. The notary, who has among his minutes a last will, of whatever kind, shall be obliged to give notice thereof to the interested persons, after the death of the testator.

970. The witnesses who are present at the making of last wills, must be males, of age, and inhabitants of the colony.

They must understand the language in which the will is couched, or that in which the act of superscription or deposit is written.

As witnesses of a last will by public act cannot be received the heirs or the legatees, neither their relatives by consanguinity or affinity, until the fourth degree inclusive, neither the children or grand children or relatives by consanguinity in the same degree, nor the domestics of the notaries, before whom the will is passed, nor finally those, who have been condemned to a corporal or infamous punishment.

971. An inhabitant of the colony, who finds himself in a foreign country, shall not be at liberty to make any other last will, than by an authentic act, and with observance of the formalities, which are in usage, in the country, where the act is passed.

He is however at liberty to dispose by a private document, in the manner as prescribed by article 961.

972. In time of war military men and other persons belonging to the armies, being in the field or otherwise in a place besieged, can make their last will before an officer, or if there be no officer present, before the person, who exercises on the spot the supreme military command, and in the presence of two witnesses.

973. The last will of persons, who are at sea, in the course of a voyage, can be passed before the captain or mate of the vessel, and in their default, before the person, who supplies their place, in presence of two witnesses.

974. In places, with which all communication is prohibited, on account of the plague or other contagious disease, or where there is no possibility of having the ministry of a notary, last wills can be made before any public functionary, in presence of two witnesses.

975. The last wills, mentioned in the three preceding articles, must be signed by the testators, likewise by the person, before whom they are passed, and at least by one of the witnesses.

If the testator or one of the witnesses declares that he cannot write or is prevented from signing, this declaration and the cause of prevention, shall be expressly mentioned in the act.

976. These last wills shall be void, if the testator dies six months after the cessation of the cause, why they were made in such form.

977. In the cases provided for by articles 972, 973 and 974, the persons named therein can dispose by a private document, provided such document be written throughout, dated and signed by the hand of the testator.

978. Such last will shall be void if the testator died three months after the cessation of the cause, mentioned in the three articles quoted above, unless the document may have been given in deposit with a notary, in the manner as prescribed in article 958.

979. The formalities, to which the different last wills, are subjected according to the dispositions of this section, must be observed, under penalty of nullity.

FIFTH SECTION.

Of the institution of heirs.

980. The institution of heir is a testamentary disposition, by which the testator gives to one or more persons the goods, which he will leave at his death, either in whole, or for a part, as the half, one third.

981. At the death of the testator, the heirs nominated by last will, as well as those, to whom the law grants a portion in the succession, are seised of all the property of the succession.

Articles 862 and 863 are applicable to them.

982. If there arises a dispute, as to who is heir, and accordingly entitled to the seizin, the judge can command that the goods shall be placed under judicial sequestration.

SIXTH SECTION.

Of legacies.

983. A legacy is a particular disposition, by which the testator gives to one or more persons, certain specified goods, or otherwise all his goods of a certain kind, as per example, all his moveable or immoveable goods, or the usufruct of all or of a portion of his goods.

984. All absolute and unconditional legacies confer upon the legatee, from the day of the testator's death, a right of claiming the thing bequeathed, which right is transmitted to his heirs or assigns.

985. The legatee shall be obliged to demand the delivery of the thing bequeathed, from the heirs or legatees who are charged therewith.

He is entitled to the fruits or interests, from the day of the testator's death, if the demand for delivery has been made within the year, or if this delivery has taken place voluntarily within the same period.

If this demand be made later, he shall only be entitled to the fruits and interests, counting from the day that the demand has been made.

986. The interests or fruits of the thing bequeathed, accrue to the benefit of the legatee, from the day of the death, at whatsoever period he has demanded the delivery :

1. When the testator has declared his intention in this respect in the will ;
2. When a life-annuity, or an annual, monthly or weekly allowance is bequeathed, under the title of subsistence.

987. The taxes imposed under whatsoever name, in favour of the country, upon legacies, are to the charge of the legatee, unless the testator have commanded the contrary.

988. If the testator has imposed upon several legatees the fulfilment of a charge, they are thereto bound, each in proportion to the amount of his legacy, unless the testator may have disposed otherwise in this respect.

989. The thing bequeathed shall be delivered, with all that appertains to it, and in the state in which it shall be found, on the day of the death of the testator.

990. However, that which the testator, who has bequeathed an immoveable, shall have purchased or acquired in order to enlarge it, is not included in the legacy, although it may be contiguous, unless the testator have commanded it otherwise.

The improvements, embellishments, or new buildings, made by the testator on the land bequeathed, or the enlargement of the circumference of an enclosed land, shall be considered, without a new disposition, to form part of the legacy.

991. If before or after making the last will, the thing bequeathed has been mortgaged for a debt of the succession, or also for the debt of a third person, or if it is encumbered with an usufruct, he who must deliver the legacy, is not bound to release the property from such a bond, unless he have been charged to do so by an express disposition of the testator.

If however the legatée may have paid the mortgage debt, he shall have a recourse on that account, against the heirs, conformable to article 1132.

992. When the testator has bequeathed a particular thing of another, this legacy shall be null, whether the testator was aware or not, that this thing did not belong to him.

993. The disposition of the preceding article does not however prevent, that, as a condition the obligation can be imposed on the heir or legatee, of making certain payments to third parties from his own goods, or of acquitting debts.

994. Legacies of undeterminate things but of a certain species, are valid, whether the testator have left such thing or not.

995. When the legacy consists of a thing undeterminate, the heir shall not be obliged to give of the best quality, but it shall also not be sufficient to him to give it of the worst.

996. If simply the fruits or revenues have been bequeathed, without the testator having employed the word *usufruct* or *use*, the thing shall remain under the administration of the heir, who is obliged to pay out the fruits and revenues to the legatee.

997. A legacy made to a creditor, shall not be deemed to have been left as a compensation for the debt, neither can a legacy made to domestics, be considered to be given in payment of wages earned.

998. When the succession has not been accepted in whole or in part, or when it has been accepted under benefit of inventory, and the goods left are not sufficient to pay out the legacies in their entirety, all the legacies shall be reduced in proportion to their amount, unless the testator may have disposed otherwise in this respect.

SEVENTH SECTION.

Of substitutions permitted in favour of grandchildren, and descendants of brothers and sisters.

999. The goods, of which parents have the right of disposal, can be given by them by last will, entirely or partly, to one or more of their children, with the charge of surrendering those goods to their children, already born, as well as to those, who may yet be born.

In case of the previous death of a child, the same disposition can be made for the benefit of one or more grand children, with the charge of surrendering the goods to their children, already born, and who may yet be born.

1000. Likewise the testamentary disposition shall be valid which is made for the benefit of one or more brothers or sisters of the testator, for the whole or part of the goods, not reserved by the law from disposal, with the charge of surrendering the goods, to the children of his aforesaid brothers and sisters, which are born already, or may yet be born.

The same disposition can be made for the benefit of one or more children of brothers or sisters, who died before, with the charge of surrendering the goods to their children, who are born already, or may yet be born.

1001. If the heir encumbered dies, leaving children in the first degree and descendants of a child, previously dead, these latter shall receive, by representation, the portion of the child, who died before.

The same shall take place, if all the children in the first degree having died previously the one, who is charged with the surrender, does not leave but grand-children.

1002. The dispositions, permitted by articles 999 and 1000, shall not be valid except in as far as the substitution shall have been made for one degree alone, and for the benefit of all the children of the person encumbered, who are born already, or may yet be born, without exception or preference of age or sex.

1003. The rights of the heirs by substitution commence at the moment that the enjoyment of the one, who is encumbered, ceases.

The voluntary renunciation of the enjoyment, made in favour of the expectants, shall not be permitted to prejudice the creditors of the person encumbered, whose claims are anterior to this renunciation, nor the children, who may be born subsequent to that renunciation.

1004. He who makes the dispositions, permitted by the preceding articles, may place the thing itself, by last will, or by a later notarial act, under the management of one or more administrators, during the period of the charge.

In such case the dispositions of art. 816, of the first and second part of art. 817, and of art. 818 are applicable to the administrators. They may charge a salary for their trouble, in the cases and in the manner as prescribed in the following title, in respect of testamentary executors.

1005. In case of the death, or in default of the appointed administrator, the canton judge shall appoint, at the request of the persons encumbered or of other parties interested, or also on demand of the public ministry, another in the place of the one wanting.

1006. Within one month after the death of the person who disposed of the goods, under the charge of surrender, an inventory shall be made, at the request of the appointed administrator, of the party interested or of the public ministry, of all the goods, which constitute the succession.

If the disposition consists only of a legacy, a special list shall be made of all the objects included therein.

This inventory or list shall contain the valuation of the moveable goods.

1007. The inventory or list shall be made in the presence of the appointed administrator and other parties interested, or these being properly summoned.

If they are present at the inventarisation, it can be made by private act; in which case this document must be conveyed to the office of records of the canton Justice, within the term of fourteen days after the conclusion of the inventory.

The expenses attending this are to the charge of the goods comprised in the substitution.

1008. If the testator has not appointed an administrator, the goods shall be administered by the heir encumbered, and he shall be bound to give security for the preservation, the proper use and the surrender of the goods, unless the testator may have released him expressly from all obligation of giving security.

1009. The heir encumbered, who in the case of the preceding article, cannot give security, must suffer that, at the request of parties interested, or on demand of the public ministry, the goods be placed under the management of an administrator, to be appointed by the canton judge, in regard of whom, all the rights and obligations shall be valid, which are established in respect of guardians of minors. The final disposition of art. 1004 is also applicable to such administrators.

1010. The heir encumbered, who has himself, the administration, must use the goods encumbered, as a good father of a family, and is in this respect, as also in respect of bearing the expenses and charges and making repairs, equal to an usufructuary.

1011. The immoveable goods, likewise the rents and active debts may not be alienated or mortgaged, otherwise than with permission of the high court of Justice, after the hearing of the expectant and of the public ministry.

This permission can only be granted in the event of absolute necessity or of an evident advantage, as well to the expectant, as to the heirs encumbered, and in case of alienation, on security of re-investment, subject to the fidei-commissary charge, if the heir encumbered administers the thing himself.

If the goods are placed under administration the administrator shall be bound to invest the proceeds in the manner as prescribed in regard of guardians.

1012. The substitutions which are permitted by this section, cannot even by minors be objected against third parties, if they have not been made public, to wit : as regards immoveable goods, by transcription in the registers destined for this purpose, and as far as regards mortgaged debts, by an inscription on the goods which are hypothe- cated for such debts, or by a mention on the margin of the inscriptions already existing.

1013. The lawful or testamentary heirs of the person, who has made the substitution, shall not be allowed in any case, to object to the expectants, the default of transcription, inscription or mention, commanded by the preceding article.

1014. The administrators are bound to attend to the transcription, inscription or mention, commanded by article 1012, under penalty of the compensation of costs, damages and interests.

All parties interested have a right to demand that the aforesaid prescriptions be complied with.

EIGHT SECTION.

Of the substitution for such portion as the heir or legatee shall leave unalienated and unconsumed.

1015. In case of a substitution or legacy, in the manner as indicated in art. 908, the heir encumbered or legatee is authorized to alienate or to consume the thing devised to him, and even to dispose of it by donation inter-vivos, unless this latter part were prohibited entirely or partly by the testator.

1016. The obligation of making an inventory or list, after the death of the testator, and of conveying these documents to the office of records of the canton justice, directed by articles 1006, and 1007, is also applicable to the heir encumbered or legatee, of whom this section treats ; but he is not bound to give any security.

1017. After the death of the heir encumbered or legatee, the expectant has a right to demand the immediate surrender of what may be left in kind of the inheritance or legacy.

In regard of the ready money or of the proceeds of the objects alienated, it can be ascertained from notes of the heir encumbered or legatee, from domestic papers, or by all other means of proof, whether and in how far, any thing has been left from the inheritance or legacy.

NINTH SECTION.

Of the revocation and of the lapse of testamentary dispositions.

1018. A last will cannot, in whole or in part, be revoked, except by a later testamentary disposition, or by a special notarial act, by which the testator makes known the entire or partial revocation of his former will, saving the provision of art. 960.

1019. If a later testament, which contains an express revocation of the former will has not the formalities, which are required for the validity of a last will, but yet those, which are required for the validity of a notarial act, the former dispositions, which may have been repeated in the later act, shall not be considered as revoked.

1020. A later will by which the preceding one is not revoked in an express manner, annuls only such dispositions, contained in the former will, as are inconsistent with the new dispositions, or conflicting therewith.

The provision of this article is not applicable when the later will is null on account of defect in the form, although it may be otherwise valid as a notarial act.

1021. The revocation made in a later will, whether expressly or tacitly, shall produce its complete effect, although the new act remain without effect by reason of the incapacity of the heir appointed or legatee, or by reason of their refusal to accept the inheritance.

1022. Every alienation, even that by sale with power of repurchase, or by exchange, which the testator makes of the whole or of part of the thing bequeathed, shall import revocation of the legacy, in respect of all that has been alienated or exchanged, unless the thing alienated may have returned in the estate of the testator.

1023. Every disposition made by last will, under a condition dependent on an uncertain event, and of such a nature, that the testator must be considered to have made the execution of his disposition contingent on the happening of this event, shall be lapsed, if the heir appointed or legatee dies before the accomplishment of the condition.

1024. When the condition, according to the intention of the testator, merely suspends the execution of the disposition, this shall not prevent the heir appointed or legatee from having a vested right, which he transmits to his heirs.

1025. A legacy shall lapse, when the thing bequeathed has totally perished, during the life of the testator.

The same shall take place, if the thing has perished, subsequent to his death, without the act or fault of the heir or of other persons, by whom the legacy is due, although these may have neglected to deliver the thing in proper time, when, if it had been in the hands of the legatee, it would have equally perished.

1026. A legacy of a rent, active debt, or other claim against a third party, shall lapse as regards what may have been paid thereon, during the life of the testator.

1027. A disposition, made by last will, shall lapse, when the heir appointed or legatee repudiate the inheritance or legacy or be found incapable of receiving it.

If any advantages were bequeathed to a third party by the disposition, they shall not lapse in that case; but the one to whom the inheritance or legacy falls, shall remain charged with them, saving his right of renouncing the inheritance or legacy altogether and unconditionally in favour of him, to whom the advantages were bequeathed.

1028. There shall be accretion for the benefit of the heirs appointed or legatees, in the case where the inheritance or the legacy has been made to several persons conjointly, and the disposition cannot take effect in respect of some of the co-heirs or co-legatees.

The inheritance or legacy shall be considered devised conjointly, when it is made by one and the same disposition, and the testator has not assigned to each of the co-heirs or co-legatees his determinate proportion in the thing, as the moiety, one third part, etc.

The expression *for equal shares or portions* shall not be considered to be a designation of such a determinate proportion, as alluded to in this article.

1029. Furthermore the testator shall be considered to have bequeathed conjointly, when a thing, which is not capable of being divided, without suffering injury, shall have been devised by the same act to several persons, although separately.

1030. The annulment of testamentary dispositions, can be asked, after the death of the testator on account of the non-execution of the conditions.

In such case those, to whose benefit the annulment shall have been made, shall take back the things, free of all charges and mortgages, which may have been established thereon, by the heir or legatee, who has been set aside.

They shall even be allowed to exercise against third possessors of the immoveable goods, the same rights as against the heir appointed or legatee.

THIRTEENTH TITLE.

OF TESTAMENTARY EXECUTORS AND OF ADMINISTRATORS.

1031. A testator may nominate, either by last will, or by a private act such as mentioned in art. 961, or by a special notarial act, one or more executors of his testamentary dispositions.

He can also appoint several persons, in order in case of default to succeed each other as executors.

1032. Married women, minors, even when emancipated, persons placed under curatorship, and all those who are incompetent to contract obligations, may not be testamentary executors.

1033. The testator may give to the testamentary executors the seizin of all the goods of the succession, or of a determinate portion thereof.

In the first case this seizin shall extend over the immoveables as well as over the moveables.

The possession shall not continue by law any longer than one year, computing from the day on which the executors could have placed themselves in possession.

1034. If all the heirs are unanimous in this respect, they may cause the possession to cease, provided they place the testamentary executors in position, to pay or deliver the absolute and unconditional legacies, or show proof that such legacies are already acquitted.

1035. The executors of a testament shall cause seals to be affixed in the succession, if there are heirs, who are minors or placed under curatorship, and who at the death of the testator are not provided with guardians or curators, or if there are any heirs, who are not present, either personally or by proxy.

1036. They shall cause an inventory to be made of the goods of the succession, in the presence, or after due summons by proper writ, of the heirs, who are present at the island where the succession is opened.

1037. They shall take care that the will of the deceased be executed, and in case of dispute, they can appear in law, to maintain the validity of the will.

1038. If the necessary means are not ready at hand, to pay the legacies, the executors are authorised to cause the public sale, according to local usages, of the moveable goods of the estate, and if needs be also of one or more of the immoveables, but the latter not otherwise except with consent of the heirs, or in default thereof with permission of the high court of justice; all this unless the heirs may think proper to make the required advance of means.

This sale may also take place privately, if all the heirs are unanimous in that respect, saving the prescriptions with regard to minors and persons placed under curatorship.

1039. The executors are authorized to sell publicly, and with observance of local usages, such moveable goods, as are perishable, or which for other reasons, cannot be kept without loss to the estate.

The private sale of such goods can only take place in the case mentioned in the second part of the preceding article.

1040. The executors, who have possession of the succession, are authorized, to collect even at law, the debts which become due and collectible, during that possession.

1041. They have no authority to sell the goods of the succession, in order to bring them to a state of division and partition; but they are bound at the expiration of their management, to render account and justification to parties interested, and to surrender all the goods and effects of the estate, likewise the balance of the account, in order to be distributed and divided among the heirs. They shall assist the heirs in making the partition if these demand it.

1042. The power of the executor of a testament is not transmitted to his heirs.

1043. If there are several executors of a testament, who have accepted this charge, one of them, in default of the others, may act alone, and they are each of them responsible for the whole, as regards their management, unless the testator have divided their functions, and each of them have kept within the limit of the attributes assigned to him.

1044. The expenses made by a testamentary executor, for the affixing of seals, the inventory, the account and justification, and other things relative to his functions, shall be at the charge of the succession.

1045. Every disposition, by which the testator has commanded, that the executor of his will shall be exempt of making an inventory or of rendering account and justification is ipso jure null.

1046. Without prejudice to what has already been provided for the event of usufruct, of fidei-commissary substitutions and of minors and persons placed under curatorship, the testator may, by last will, or by a special notarial act, nominate one or more administrators, in order to manage the goods left to his heirs or legatees, during their life, or during a determinate period of time, provided this does not cause any infringement on the free surrender of the legitimate portion of the heirs.

The dispositions of article 1043 are applicable to this case.

1047. If the testator has not indicated any persons to take the place of the administrators, who are in default, the canton judge shall provide for such vacancy.

1048. No one is bound to accept the charge of testamentary executor, or of administrator of an inheritance or of a legacy, but he, who has accepted such a charge, is bound to terminate it.

If the testator has not assigned to the executor any determinate compensation for the performance of his functions, or has not bequeathed to him a special legacy therefor, the latter is authorized to charge for himself, or if more than one are appointed, they are authorized to charge for them jointly, the salary, allowed by art. 516 to administrators of goods of absentees.

1049. Testamentary executors, likewise the administrators mentioned in art. 1046, can be dismissed for the same reasons as guardians.

FOURTEENTH TITLE.

OF THE RIGHT OF DELIBERATION AND THE BENEFIT OF INVENTORY.

1050. All persons, to whom an inheritance has fallen, and who may desire to investigate the state of the succession, in order to be able to judge, whether it is to their interest, to accept the same, either absolutely, or under benefit of inventory, or otherwise to repu-

ciate it, shall have the right of deliberation, and shall be obliged to make a declaration thereof at the office of records of the canton justice, within whose jurisdiction the succession is opened, which declaration shall be inscribed into the register destined thereto.

An authentic copy of the act drawn, shall be transmitted, as soon as possible, to the office of records of the high court of justice.

1051. A period of four months is allowed to the heir, counting from the day that the declaration has been made, in order to cause inventory to be made and to deliberate.

Nevertheless the cantonjudge is authorized, when the heir is prosecuted in law, to prolong the above period, on account of urgent reasons.

1052. During the aforementioned period, the heir, who deliberates, cannot be compelled to assume the quality of heir. No judicial condemnation can be obtained against him, and the execution of the sentences, pronounced against the deceased, remains suspended.

He is bound, the same as a good father of a family to care for the preservation of the goods of the succession.

1053. The heir, who deliberates, is authorized to ask permission from the cantonjudge, to sell all such objects which need not or cannot be kept, likewise to perform all such acts, which can bear no delay.

The manner of sale shall be determined in the judicial permission.

1054. The cantonjudge, at the request of parties interested, can prescribe all such measures, which he may think requisite, as well for the preservation of the goods of the succession, as of the interests of third parties.

1055. After the expiration of the period specified in art. 1051, the heir can be compelled to repudiate or accept the succession, either absolutely, or under benefit of inventory.

In the latter case a declaration must be made thereof, in the same manner as prescribed in art. 1050.

The disposition of the second part of art. 1050 is also applicable in this case.

1056. Even after expiration of the period, the heir preserves the faculty of causing inventory of the estate to be made, and of accepting the same under benefit of inventory, unless he have comported himself as absolute heir.

1057. The heir forfeits the benefit of inventory, and shall be considered absolute heir :

1. If he knowingly, and in bad faith, has omitted to put on the inventory some goods belonging to the succession.
2. If he has rendered himself guilty of the concealment of goods, belonging to the inheritance.

1058. The benefit of inventory has for effect :

1. That the heir is not further bound to the payment of the debts and charges of the succession, than to the amount of the value of the goods, comprised therein, and even, that

he can relieve himself of this payment, by abandoning all the goods, belonging to the succession, to the disposal of the creditors and legatees ;

2. That the personal goods of the heir are not confounded with those of the succession, and that he preserves the right of claiming his own active debts against the succession.

1059. The heir who has accepted the succession under benefit of inventory, is bound to administer the goods thereto belonging, as a good father of a family, and to liquidate the succession as soon as possible ; he is accountable to the creditors and legatees.

1060. He may not sell the moveable and immoveable goods of the succession, in any other way, than at public sale, and according to local usages.

He is bound, in the event of the sale of immoveables, which are mortgaged, to pay the mortgage creditors, who made themselves known, by means of an assignation on the purchaser of the immoveable, to the amount of the claim of those creditors.

1061. He is bound if the creditors or other parties interested require it, to give sufficient security for the value of the moveable goods comprised in the inventory, and for that portion of the value of the immoveable goods, which has not been assigned to the mortgage creditors.

If he fails to give this security, the moveables shall be sold, and the proceeds thereof, as well as the portion of the immoveables which has not been assigned, shall be placed in the hands of a person, to be appointed for this purpose by the canton judge, in order to acquit there from the debts and charges of the succession, for as far as the amount of such succession, shall reach.

1062. Within the term of three months, counting from the expiration of the period, prescribed by art. 1051, the heir shall be obliged to call up the unknown creditors, by means of an announcement published in one of the newspapers issued in the colony, and affixed to the building of the canton justice, in order to render immediately to these, as well as to those who are known, and to the legatees, account and justification of his administration, and to acquit their claims and legacies, for as far as the amount of the succession shall suffice.

1063. After the liquidation of the account and justification, the heir shall pay the claims of the creditors, who may then be known, either in whole, or in proportion to the amount of the succession.

Creditors who appear after the distribution, shall, accordingly as they present themselves, be paid only from the unsold goods and the residue.

1064. If there is any opposition, the creditors cannot be paid but conformably to a classification to be regulated by the judge.

1065. The legatees cannot demand payment of their legacies until after the expiration of the term, prescribed by art. 1062, and after the payment, alluded to in art. 1063.

Creditors, who appear after the payment of the legacies, have only their recourse against the legatees.

This recourse is prescribed by the lapse of three years since the day, on which the payment to the legatee has been effected.

1066. The heir, who has accepted the succession under benefit of inventory, cannot be proceeded against in his personal property, until after he, having been warned to render his account, shall have remained in default of complying with this obligation.

After the liquidation of the account, his personal property is only answerable for the payment of such sums of money, proceeding from the succession, which have come into his hands.

1067. The expenses of sealing, of the inventory, of making the account, likewise all others, which have been made in a legal manner, are at the charge of the succession.

1068. The dispositions of articles 1051, 1057 and following are also applicable to the heirs, who, without having availed themselves of the right of deliberation, have accepted a succession under benefit of inventory, by making the declaration mentioned in the final part of art. 1055.

1069. Any disposition, by which the testator may have prohibited to make use of the right of deliberation or of the benefit of inventory is null and void.

FIFTEENTH TITLE.

OF THE ACCEPTANCE AND REPUDIATION OF INHERITANCES.

FIRST SECTION.

Of the acceptance of inheritances.

1070. An inheritance can be accepted either absolutely, or under benefit of inventory.

1071. No one is obliged to accept an inheritance which has accrued to him.

1072. Inheritances accruing to married women, minors and persons placed under curatorship, cannot be legally accepted, but with observance of the regulations, regarding such persons.

Inheritances mentioned in art. 927, and sanctioned by the Governor, can only be accepted under benefit of inventory.

1073. The acceptance of an inheritance has a retro-active force to the day, on which it was opened.

1074. The acceptance of an inheritance takes place expressly or tacitly; it takes place expressly when one assumes in an authentic or private writing the title or quality of heir; the acceptance takes place tacitly, when the heir performs an act, which necessarily manifests his intention of accepting the inheritance, and to which he would only have been authorized in his quality as heir.

1075. Every thing regarding the funerals, acts purely conservatory, likewise those which serve to supervise the succession, or to administer it provisionally, shall not be considered as acts, which evince the tacit acceptance of an inheritance.

1076. If heirs disagree whether an inheritance shall be accepted or not, the one can accept it, and the other repudiate it.

If heirs disagree regarding the manner of acceptance of an inheritance, it shall be accepted under benefit of inventory.

1077. When anyone, to whom an inheritance has fallen, died without having repudiated or accepted it, his heirs are authorized to accept or repudiate the inheritance in his stead and the disposition of the preceding article is applicable to them.

1078. He who has accepted an inheritance for his hereditary share, may not repudiate the share which falls to him by right of accretion, except in the case provided for in art. 1080.

1079. A person of age cannot obtain relief of the acceptance of an inheritance made by him, except in the case that such acceptance have taken place in consequence of compulsion, or of a fraud committed toward him.

He cannot disclaim his acceptance under pretext of being injured by it, except only in case the inheritance is diminished more than the half, as a result of the discovery of a testament, unknown at the moment of the acceptance.

1080. The share of an heir, who has obtained relief of his acceptance, does not belong by accretion to his co-heirs, but in as far as they shall have accepted it.

1081. The power to accept an inheritance is prescribed by the lapse of thirty years, counting from the day on which it was opened, provided before, or after the expiration of that period, the succession have been accepted by one of those who are called to it by the law, or by a testament; without prejudice however to the rights of third parties on the succession, acquired by any legal title.

1082. The heir, who has repudiated the inheritance, can still accept it, as long as it shall not have been accepted by those who are called by the law or by testament; saving the rights of third parties, as said in the preceding article.

SECOND SECTION.

Of the repudiation of inheritances.

1083. The repudiation of an inheritance must be made expressly, and must take place by means of a declaration, made at the office of records of the cantonjustice, within whose jurisdiction the succession is opened.

The disposition of the second part of art. 1050 is applicable hereto.

1084. The heir, who repudiates the succession, is considered never to have been heir.

1085. The hereditary share of him, who has repudiated the inheritance, accrues to his co-heirs by right of accretion. If he alone is heir, it devolves upon the relations in the next degree, or, if there are no heirs in the degree, capable of inheriting, upon the remaining spouse.

If these all repudiate the succession, the country may claim it.

1086. He, who has repudiated an inheritance can never be represented; if he is the only heir in his degree, or if all the heirs repudiate the inheritance, the children come in in their own right, and inherit for equal shares.

1087. The creditors of him, who has repudiated an inheritance to the prejudice of their rights, can cause themselves to be authorized by the high court of justice, to accept the succession in the name of their debtor, in his place, and for him.

In such case the repudiation of the inheritance is not annulled any further than for the benefit of the creditors, and to the amount of their claims; it is by no means null for the benefit of the heir, who has repudiated the inheritance.

1088. The power of repudiating an inheritance cannot be lost by any prescription.

1089. One cannot, even by marriage-contract, renounce the inheritance of a person, who is yet alive, nor alienate the rights, which one eventually may be able to acquire to such inheritance.

1090. The heirs, who have made away with or concealed any goods, belonging to a succession, forfeit the right of repudiating the inheritance; they remain absolute heirs, notwithstanding their repudiation, without being permitted to claim any share in the goods made away with or concealed.

1091. No one can obtain relief of the repudiation of a succession, except in case such repudiation has taken place in consequence of fraud or compulsion.

SIXTEENTH TITLE.

OF PARTITION (DIVISION OF ESTATE).

FIRST SECTION.

Of partition and its effects.

1092. No one is obliged to remain in an undivided estate. Partition can always be demanded, notwithstanding any prohibition to the contrary.

Parties may however agree to suspend partition during a determinate period.

Such agreement is only binding for five years, but it may be renewed each time, after the expiration of that period.

1093. The creditors of the testator, likewise the legatees are authorized to oppose the partition.

The act of partition passed after such an opposition, and before payment of what was payable and due in favour of the creditor or legatee, at the time of opposition, is null in respect of such creditor or legatee.

1094. Against the action for partition, prescription can only be invoked by the heir or the co-heir, who during the time required for prescription, has had separately possession of goods, belonging to the estate, but not further however, than with regard to such goods.

1095. If all the heirs have the free disposal of their properties, and are present, the partition can be made in such manner and by means of such act, as they shall deem fit, saving the disposition of the second part of art. 665.

1096. Partition cannot be demanded in behalf of those, who have not the free disposal of their properties, except with observance of the regulations established by law, in regard of such persons.

The husband can, without the concurrence of his wife, demand partition, or assist in effecting it, in respect of all the goods, which accrue to the community.

In respect of goods, which accrued to the wife, and which do not belong to the community, likewise when separation of goods has taken place between the spouses, the wife is authorized to demand the partition or to assist in effecting it, provided she be assisted or authorized thereto by her husband, or empowered by the judge.

1097. If one or more of the parties interested refuse or fail to concur in the partition, after it has been commanded by judicial sentence, the high court of justice shall appoint, on the petition of the most ready party, for those who have refused or failed to concur, or in as far as they may have conflicting interests, for each of them, a disinterested person, if such appointment was not already made in the sentence, in order, as administrators, to represent such heirs in the partition, in conformity with articles 513 to 516, and to administer that which they shall receive.

In such case, likewise when among the heirs there are persons, who do not possess the free disposal of their properties, the partition cannot take place except with observance of the dispositions, contained in the following articles, and this under penalty of nullity, in the event of violation of any of the directions, contained in articles 1098 first part and 1100.

1098. At the partition the supervising guardians and supervising curators must be present.

If the cantonjudge is of opinion, that both the guardian and the supervising guardian, or both the curator and the supervising curator, or the administrator, have an interest conflicting with that of the heirs, whom they represent, he shall appoint *ex officio* one or more guardians *ad hoc*, to protect the interests of those heirs in the partition.

1099. If there exists as yet no inventory, it shall be made, either beforehand in a separate act, or at the same time with the partition, and in one and the same act, conformable to the prescriptions of the law.

If however all the heirs, being present at the time of the testator's death, and having the free disposal of their properties, have made no inventory, and subsequent changes in the state of the succession render it impossible to comply with the regulations regarding inventurisation, the partition shall commence with a statement, as accurate as possible, of the succession, such as it has been left by the testator, of the changes, which happened since, and of its present state. The validity of this statement shall at the same time be sworn to by him or by those, who has or have remained in possession of the undivided succession.

1100. The partition shall be made by an act, passed before a notary, selected by the parties, or in the event of difference, nominated by the high court of justice, on the petition of the most ready parties, in the presence and subject to the sanction of the cantonjudge, who in testimony thereof, shall also sign the act, without however drawing a proces verbal thereof.

1101. If the cantonjudge refuses to sanction the projected partition, and the joint heirs and their representatives may deem such refusal not grounded, the cantonjudge shall state the reasons of his refusal, and they shall be inserted in a proces verbal to be drawn by the notary.

The project of partition, verified by the cantonjudge and the notary, shall be conveyed, with a copy of this proces verbal, by the notary to the office of records.

The proces verbal of the notary and the project of partition are free of stamp.

The heirs, or the most ready of them, can enter their grievances to the high court of justice, by a motivated petition. The high court, if needs be, after hearing the cantonjudge and the parties, and in all cases, the public ministry, shall give judgment thereon in the last resort.

In case of sanction the partition shall thereupon be passed before the notary, and in presence of the cantonjudge, in conformity with the project, which after having been verified by the president and the recorder, shall be returned to the notary, and attached by him to the original of the act.

1102. If the heirs, or one or more of them, are of opinion, that the immoveables of the succession, or some of them, ought to be sold, either in the interest of the estate, for the payment of debts or otherwise, or in order to establish a proper division, the high court of justice, after the hearing or proper summons of other parties interested, can command the sale, conformable to the prescriptions of articles 636 to 640 of the Code of Civil Procedure, with this understanding, that in case of a public sale, the presence, or at all events, the proper summons, of the supervising guardians and supervising curators is required.

If one of the co-heirs purchases an immoveable, it shall have in respect to him, the same consequence, as if he had acquired it in the partition.

1103. The valuation of goods present in the estate, at the time of the partition shall be effected as follows :

Active debts, and shares in companies, mentioned in price currents, established and issued by public authority, shall be estimated according to those price currents ;

Other moveables, at the values, at which they are appraised in the inventory, unless one or more heirs may desire a further valuation, by an expert.

Immoveables at the price to be determined by three experts.

1104. The experts are appointed by parties interested, or in case of difference, by the cantonjudge, within whose district the succession is opened, or, for as far as it regards the valuation of immoveables, by the cantonjudge, within whose district such goods are situated.

The experts are sworn to, before the valuation, by the cantonjudge, within whose jurisdiction the succession is opened, or, for as far as it regards the valuation of immoveables, by the cantonjudge, within whose district such goods are situated.

If in regard of immoveables situated outside of the colony, parties cannot agree regarding the experts, the canton judge of the district, where the succession is opened, shall determine how those experts are to be appointed and sworn, and is also himself authorized to make the appointment and receive the oath.

1105. After regulating the restitution, and what is due by the estate to one or more heirs, on whatsoever account, the residue of the estate shall be determined, and the share of each heir or stock.

After this, and with mutual agreement of parties interested, a distribution shall be made, indicating the goods which fall to the share of each, and if there are terms for such, the sum of money which must be paid to equalize one or more shares.

If parties interested cannot agree regarding such distribution, there shall be formed as many lots, as there are heirs or stocks, and a drawing at hazard shall determine the allotments.

The subdivision of the goods allotted to one stock shall take place in like manner.

1106. After the drawing at hazard, the heirs are at liberty to exchange the lots assigned to them, provided this take place before closing the act of partition and be inserted in the act.

This barter has the same effect, as if the goods reciprocally exchanged were obtained by distribution.

A barter of this kind can also take place, in the same manner and with the same effect, in regard of a portion of the goods distributed, between heirs who have the free disposal of their properties.

1107. The papers and titles of property, belonging to the goods allotted shall be delivered to him, to whom such goods have devolved.

If those documents relate to a thing, allotted to more than one heir, they shall remain with him, to whom the principal part of such thing is allotted, under obligation of granting insight to the co-heirs, and if any one of them desires it, copies or extracts at their own expense.

1108. The general papers of the estate shall remain in the keeping of him, who is nominated thereto by the majority of the heirs, or, in case of difference, by the cantonjudge, under similar obligation of granting insight, copies or extracts, as directed by the preceding article.

1109. Every heir is considered to have succeeded immediately in the goods allotted to him, or acquired by him by purchase according to article 1102.

None of the heirs is accordingly considered ever to have had the property of the other goods of the succession.

1110. The co-heirs are bound, each in proportion to his share, to warrant each other reciprocally against all interruption and eviction, proceeding from a cause anterior to the division, likewise for the solvency of debtors of rents or other active debts. There is no warranty when it has been positively excluded by a special and express stipulation in the act of partition.

It ceases when the co-heir, by his own fault, suffers the eviction.

Warranty for the solvency of debtors of a rent or other active debt of the succession, is only due, when the claim has been allotted to one of the heirs to its full amount, and if such heir proves, that already at the time of passing the act of partition the debtor was insolvent.

The claim of warranty alluded to in the preceding part, cannot be instituted after the expiration of three years since the partition.

1111. If one or more of the heirs may not be able to pay their share in the compensation due to their co-heirs, on account of any warranty, the share due by him or them shall be assessed, in proportion to the hereditary share of each on the warrantee and the co-heirs, who are in a position to pay.

SECOND SECTION.

Of restitution.

1112. Without prejudice to the obligation of all the heirs, of paying to and settling with their co-heirs, for every thing which they owe to the succession, all donations intervivos, which they have received from the testator, must be restituted :

1. By the heirs in the descending line, legitimate or natural, whether they have accepted the succession absolutely, or under the benefit of inventory, and whether they are called only to the legitimate portion or to more ; unless the gifts have been made with express dispensation of restitution, or the donees have been relieved of the obligation of restitution by an authentic act, or by last will ;
2. By all other heirs, either ab-intestato or by last will, but only in the case that the testator or donor has expressly commanded or stipulated the restitution.

1113. The heir, who repudiates the inheritance, is not bound to make restitution of what has been given to him by donation, except to adjust such part of the legitimate portion, which may have been curtailed thereby.

1114. If the restitution amounts to more than the hereditary share, the excess needs not be restituted, saving the disposition of the preceding article.

1115. Parents are not required to make restitution of the donations, made to their child by his grandparents.

In like manner a child coming to the inheritance of his grand parents in his own right, is not required to make restitution of the donation made by these to his parents.

On the contrary the child, who comes to the inheritance only by representation, must make restitution of the donations, made to his parents, even when the child may have repudiated the succession of his parents.

The child is however, in the event of such repudiation, not responsible towards his co-heirs in the ancestral succession, for the debts of his parents.

1116. Donations made to the one spouse, by one of the parents of the other spouse, are not, even for the half, subject to restitution, although the objects given by donation fell into the community.

If the donations are made conjointly to both the spouses, by the father or the mother of one of them, restitution shall be made for the half.

When the donations are made to the spouse, by his own father or own mother, he shall make restitution of the whole.

1117. Restitution is only made to the succession of the donor; it is only due by one heir for the benefit of the other.

There is no restitution for the benefit of legatees or of creditors of the estate.

1118. Restitution is made, either by returning in kind into the estate the thing received, or by receiving so much less than the other coparceners.

1119. Restitution of immoveables can be made at the option of the restitutor, either by returning them in kind, in the state in which they were at the moment of restitution, or by making restitution of the value, which they had at the time of the donation.

In the first case, the restitutor is answerable for the deterioration, which the goods have suffered by his fault, and he is bound to release them from the charges and mortgages, which he has imposed on them.

All necessary expenses, made for the preservation of the thing, and the costs of maintenance must, in the same case be reimbursed to the restitutor, with observance of the rules, prescribed in the title on usufruct.

1120. Restitution of ready money is made at the option of the restitutor, by payment of the amount, or by causing such amount to be paid to him less in his hereditary share.

1121. Restitution of moveable goods is made at the option of the restitutor, by reimbursement of the value, such as it was at the time of the donation, or by returning the things in kind.

1122. Besides the donations, subjected to restitution in art. 1112, restitution shall also be made of everything furnished to procure to the heir a situation, profession or trade, or for the payment of his debts, and all marriage gifts.

1123. Are not subjected to restitution :

The costs of maintenance and education ;

The allowances for necessary subsistence ;

The expenses for teaching any branch of commerce, art, handicraft or trade ;

The costs of study ;

The costs of putting a substitute in the armed service of the country ;

The wedding costs, clothing and jewelry given as an outfit of marriage.

1124. Interests and fruits of things subject to restitution, are only due from the day that a succession is opened.

1125. Everything that has perished by accident and without the fault of the donee, is not subject to restitution.

THIRD SECTION.

Of payment of debts.

1126. The heirs, who have accepted an inheritance must contribute to the payment of the debts, legacies and other charges, in proportion to what each of them receives from the succession.

1127. They are bound to this payment personally, and each in the proportion of his hereditary share, saving the rights of the creditors on the entire succession, as long as it is undivided, likewise those of the creditors of mortgages.

1128. If immoveables, belonging to the succession, are encumbered with mortgages, each of the co-heirs has a right to require, that these charges be acquitted out of the estate, and the goods released from the mortgage, before they proceed to the formation of lots.

When the heirs divide the succession in the state in which they find it, the immoveable encumbered must be appraised in the same manner as the other immoveable goods ; a deduction is then made of the capital sum of the charges, from the total value of the immoveable and the heir, to whom the immoveable has been allotted, remains alone charged, in regard of his co-heirs, with the acquittal of the debt, and is bound to warrant them therefor.

If the charges are only established on the immoveable, without any personal bond, none of the co-heirs can demand that the charge be acquitted, and in such case the immoveable is included in the division after deducting the capital sum of the charges.

1129. The heir, who in consequence of a mortgage, has paid more than his share in the common debt, can reclaim from his co heirs, what each of them personally should have contributed toward the debt.

1130. If one of the coheirs becomes insolvent, his share in the mortgage debt is assessed upon the others, in proportion to the hereditary share of each.

1131. A legatee is not bound for the debts and charges of the succession, saving the recourse of the creditor of a mortgage on the immoveable bequeathed.

1132. If the legatee have discharged the debt, with which the immoveable bequeathed was encumbered, he shall thereby enter *ipso jure* into the rights of the creditor against the heirs.

1133. The creditors and legatees of the deceased can demand from the creditors of the heir, that the estate of the deceased be separated from that of the heir.

1134. If the creditors or legatees have commenced their action for separation within the term of six months, after the succession was opened, they shall have the right to cause their demand to be noted in the public registers, destined for that purpose, on the margin of every immoveable, belonging to the succession with this result, that after this annotation, the heir shall not be at liberty to alienate or encumber the thing, to the detriment of the rights of those plaintiffs against the succession.

1135. This right can however be no longer exercised, as soon as there is a novation of debt in the claim against the deceased, by accepting the heir as debtor.

1136. This right is prescribed by the lapse of three years.

1137. The creditors of the heir have no authority to demand this separation of the estate against the creditors of the succession.

FOURTH SECTION.

Of the rescission of partition.

1138. Partitions can be rescinded :

1. For cause of compulsion ;
2. For cause of fraud, committed by one or more of the coparceners ;
3. For cause of lesion, amounting to more than one fourth part.

The simple omission of one or more objects, belonging to the succession, shall only give a right to demand a further partition.

1139. In order to judge whether there has been lesion, the goods shall be estimated according to their value at the time of the partition.

1140. He, against whom a demand for rescission has been made, for cause of lesion, can prevent the re-partition, by tendering to the plaintiff, either in ready money, or in kind, the supplement of his hereditary share.

1141. The co-heir, who has alienated his lot in whole or in part, cannot demand rescission of the partition for cause of compulsion or fraud, if the alienation has taken place subsequent to the cessation of the compulsion, or to the discovery of the fraud.

1142. The action for rescission is prescribed by the lapse of three years, counting from the day of the partition.

1143. The action for rescission is admitted against every act, which has for its object the cessation of the undivided state between the co-heirs, it being the same, whether the act be passed under the name of purchase and sale, barter, composition or otherwise.

But after the partition, or an equivalent act, is accomplished, no rescission can be demanded of a composition, which may have been made to remove the real difficulties, which presented themselves in the first act.

1144. The action for the rescission of partition is not admitted against the sale of a hereditary right, made without fraud to one or more co-heirs to their advantage or disadvantage, by the co-heirs or by one of them.

1145. No re-partition, made after rescission of the partition, can prejudice the rights previously obtained in a legal manner, by third parties.

1146. Every renunciation of the right of claiming rescission of a partition is void.

FIFTH SECTION.

Of distribution made by the father, mother, or other relatives in the ascending line, among their descendants.

1147. The father, mother and other relatives in the ascending line, may make by testamentary disposition or by notarial act, distribution and partition of their goods, among their children and descendants.

1148. If all the goods, which the relative in the ascending line leaves on the day of his death, have not been comprised in the distribution, those not distributed shall be divided, according to law.

1149. If the distribution has not been made among all the children, who are alive at the time of the decease, and the descendants of those, who died before, the distribution shall be entirely null. A new partition in the legal form may be claimed, either by the children or descendants, who have not received any share thereby, or even by those, among whom the distribution has been made.

1150. The distribution, made by a relative in the ascending line, can be impeached for cause of lesion, amounting to more than one fourth. It can also be impeached if the distribution and what is pre-bequeathed with dispensation of restitution, may have infringed on the legitimate portion of any of the descendants.

The action permitted by this article is prescribed by the lapse of three years, counting from the day on which the testator died.

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1151. The descendants who, for one of the reasons expressed in the preceding article, impeach the distribution, must advance the expenses required for the valuation of the goods, and those expenses shall remain to their charge, if their claim be found ungrounded.

SEVENTEENTH TITLE.

OF VACANT SUCCESSIONS.

1152. When at the opening of a succession, no one presents himself, who lays claim to it, or when the known heirs repudiate it, the succession shall be considered as vacant.

1153. The cantonjudge within whose jurisdiction the succession is opened, shall appoint a curator, at the request of the persons interested, or on the representation of the public ministry. If the curatorship is appointed for the reason that no one presents himself, who lays claim to the succession as heir, the judge shall appoint in preference as curator the person nominated testamentary executor, unless he may desire to be replaced by another.

1154. The curator is bound to cause seals to be affixed in the succession, and an inventory to be made by a notary, likewise to administer and liquidate the succession.

He is bound to seek out the heirs, by notices in the public newspapers or other suitable means.

He must appear in law regarding all actions, instituted against the succession, and he must exercise and continue all rights, which belonged to the deceased.

He is bound to deposit the ready money, found in the succession, likewise the proceeds of the sale of moveables and immoveables, in the chest of judicial consignment, in order to serve as a preservation of the rights of parties interested, and to render account thereof, to whomsoever it shall belong.

1155. If after the expiration of three years, counting from the opening of the succession, no heir presents himself, the final account shall be rendered to the country, which shall be authorized to cause itself to be placed provisionally in possession of the goods left.

1156. The dispositions of article 516, likewise those of articles 1062, 1063, 1064, 1065 and 1067 are also applicable to the curators of vacant successions.

EIGHTEENTH TITLE.

OF PRIVILEGED DEBTS.

FIRST SECTION.

Of privileged debts in general.

1157. All the moveable and immoveable goods of the debtor, present as well as future, are responsible for his personal obligations.

1158. Those goods serve as a common guarantee for his creditors; the proceeds, thereof is divided among them *pro rata*, in proportion to the claim of each, unless there may exist between the creditors legal reasons of preference.

1159. The preference between creditors proceeds from privilege, from pledge and from mortgage or hypothecation.

Pledge and mortgage are treated of in the nineteenth and twentieth title of this book.

1160. Privilege is a right granted by the law to one creditor above the other, only on account of the nature of the debt.

Pledge and mortgage have priority over privilege, except in the cases, in which the law expressly determines the contrary.

1161. Between privileged creditors the rank is regulated according to the different nature of the privileges.

1162. Privileged creditors, who are in the same rank, are paid *pro rata*.

1163. The preference of the public treasury, the order in which it is exercised, and the time of its duration, are regulated by general ordinances relating thereto.

That of corporations or bodies corporate, entitled to levy charges, are also regulated by ordinances relating thereto.

1164. Privileges exist either on certain particular things, or on all the moveable and immoveable goods in general. The first have the preference over the latter.

SECOND SECTION.

Of the privileges established on certain particular things.

1165. The privileged debts on certain particular things are :

1. The judicial expenses, caused exclusively by the execution on a moveable or immoveable thing*. These are discharged from the proceeds of the thing levied on, in preference of all other privileged debts, and even in preference of pledge and mortgage ;
2. The hire of immoveables, the expenses of repairs, to which the lessee is bound, likewise everything that relates to the compliance with the lease ;
3. The purchase-money of moveable goods, not yet paid for ;
4. The expenses made for the preservation of a thing ;
5. The expenses for labour to a thing, due to the workman ;
6. That which is furnished by an innkeeper, in that capacity, to a traveller ;
7. The charges of carriage and additional expenses ;
8. That which is due to masons, carpenters and other head-workmen, for the building, rebuilding and repairs of immoveables, provided the claim be not older than three years, and the property of the immoveable have remained with the debtor ;

9. The compensations and payments, to which public functionaries are holden, on account of neglect, mistakes or offences, committed by them, in the exercise of their office.

1166. The lessor can exercise his privilege on the fruits, which are as yet attached by branches to the trees, and by roots to the ground; further on the fruits reaped and not yet reaped, which are on the estate, and on everything that is on the estate, as well for the furnishment of the house hired or of the farm, as for the cultivation or use of the land, such as cattle, agricultural implements and the like; without regard whether the objects above named belong to the lessee or not.

If the lessee, has lawfully underlet to another a portion of the thing leased, the lessor cannot exercise his privilege on the objects, which are in or on that portion, any further than at the rate of the portion taken over by the under-tenant, and in as far as the latter may not be able to show that he has paid his hire, according to the agreement.

1167. Nevertheless the purchase-money of seeds yet due, and the expenses of the harvest of the current year, yet due are paid in preference over the lesser, from the proceeds of the harvest, and the unpaid purchase-money of implements, from the proceeds of those implements.

1168. The lessor can seize the moveables, on which privilege is granted to him by article 1166, when they have been removed without his consent; and he retains his privilege on them, although they may be pledged to a third party, by pawning or in any other way, provided he has demanded those objects judicially, within the term of forty days after the removal of the moveables, belonging to a farm, and within the term of fourteen days, if it regards things, which have served for the furnishment of a house.

1169. The privilege of the lessor extends itself to the hire and farm-rent due during the last three years, and the current year.

1170. The seller of moveable goods, not paid for, can exercise his privilege on the purchase-money of those goods, if they are still in possession of the debtor, without any difference whether he sold those goods on term, or without stipulation of time.

1171. If the sale is made without stipulation of time, the seller has even the right to revendicate the goods, as long as they are in the possession of the purchaser, and to prevent a re-sale thereof, provided the revendication be made within thirty days after delivery, and the things be found still in the same state, in which they were delivered.

1172. The seller can however not exercise his privilege, until after the lessor of the house or of the farm, unless it be proven, that the lessor had a knowledge, that the furniture and other things serving for the house or farm, were not paid for by the lessee.

1173. The privileges mentioned in art. 1165, No. 4, 5, 6, 7, 8 and 9 are exercised as follows:

Those of No. 4, on the thing for the preservation of which the expenses have been made;

Those of No. 5, on the thing on which the labour was done ;
 Those of No. 6, on the effects which were brought into the inn by the traveller ;

Those of No. 7, on the thing carried ;

Those of No. 8, on the proceeds of the immoveable built, rebuilt or repaired ;

Those of No. 9, on the amount of the security given by the functionaries, and the rents due thereon.

1174. If several privileged creditors, of whom mention is made in this section, may come in competition, the expenses made for the preservation of the thing shall take the precedence, if they are made subsequent to the period at which the other privileged debts were created.

THIRD SECTION.

Of the privileges on all the moveable and immoveable goods in general.

1175. The privileged debts on all the moveable and immoveable goods in general are those enumerated hereafter, and are recovered in the following order :

1. The judicial expenses caused exclusively by execution and the liquidation of estate ; these have the preference over pledge and mortgage ;
2. The funeral expenses, saving the faculty of the judge of reducing them, when they are excessive ;
3. All expenses of the last illness ;
4. The wages of servants and menials for the past year, and what is due for the current year ;
5. The claim for the supply of provisions made to the debtor and his family, during the last six months ;
6. The claims of keepers of boarding-school for the last year ;
7. The claims of minors or persons placed under curatorship against their guardians and curators, on account of their administration, for as far as they cannot be recovered on the mortgages or other security, given conformable to the fifteenth title of the first book.

NINETEENTH TITLE.

OF PLEDGE.

1176. Pledge is a right, which the creditor acquires on a moveable thing, which is placed in his hands by the debtor, or by another in his name, as a security for the debt, and which gives to the creditor the right of being paid from that thing, in preference to the other creditors, with the exception of the costs of execution, and the expenses made for the preservation of the thing, subsequent to the pawning, which will have the preference.

1177. In respect of debts, amounting to more than one hundred guilders, there is no right of pledge, unless a written act be drawn thereof, provided with a fixed date, and containing a statement of the sum due, likewise of the objects given in pledge.

1178. The right of pledge on active debts, bearing name, cannot exist but in consequence of an act, provided with a fixed date, and notified to the debtor of the debts given in pledge.

1179. In all cases the right of pledge can only be effectual, for as far as the thing pledged has been placed and remains in the possession of the creditor, or of a third person, in regard of whom parties have agreed.

1180. The creditor may not, in the event of non-compliance of the debtor with his obligations, appropriate the pledge to himself; all stipulations contrary to this are null. He has the right to demand in law, that the pledge shall remain to him in payment, to the amount of the debt, according to an estimate made by experts, or that it shall be sold by public auction.

1181. Parties are at liberty to agree by an express stipulation, that in the event of non-payment of the debt, the pledgee shall be irrevocably empowered, after a sommation for payment to the debtor, to cause the pledge to be sold publicly, according to local usages and on the customary conditions, in order to recover from the proceeds, the amount of money advanced on the pledge, with the interests and costs.

1182. At the pledging or pawning of stocks or obligations, parties can also agree by express stipulation, that in the event of negligence of the debtor to comply with all his obligations, resulting from the act of pledging or pawning, the pledgee shall be irrevocably empowered, after previous sommation, to cause the sale of the objects pledged or pawned, and to recover from the proceeds everything, to which the pledgeor has bound himself.

The sale shall take place publicly with observance of local usages.

1183. The creditor is answerable for the loss or deterioration of the pledge, for as far as it may have taken place through his neglect.

The debtor is bound on his part to indemnify the creditor for the useful and necessary expenses, which the latter has made for the preservation of the pledge.

1184. If an active debt has been given in pledge, and such debt bears interest, the creditor must deduct these interests from those, which may be due to him.

If the debt, for the security of which an active debt is given in pledge, does not bear interest, the interests which the pledgee receives shall be deducted from the capital.

1185. As long as the pledgee does not abuse the thing given in pledge, the debtor is not authorized to demand its restoration, before he shall have paid in full the capital as well as the interests and expenses of the debt, for the security of which the pledge was given, as also the expenses made for the preservation of the pledge.

If there exists between the same debtor and the same creditor, a second debt, contracted between themselves subsequent to the pawning, and due before the payment, or on the very day of the payment of the first debt, the creditor shall not be obliged to relinquish the pledge, before both the debts are paid to him in full, although no stipulation may be made to bind the pledge for the payment of the second debt.

1186. The pledge is indivisible, notwithstanding the debt may be divisible among the heirs of the debtor, or among those of the creditor.

The heir of the debtor, who has paid his part of the debt, cannot demand the restoration of his share in the pledge, as long as the debt is not entirely acquitted.

Reciprocally, the heir of the creditor, who has received his share in the debt, may not return the pledge to the prejudice of those of his co-heirs, who are not paid.

1187. The dispositions above mentioned are not applicable to subjects of commerce, or to lombards, established by public authority, for as far as in the Commercial Code, or in the ordinances, regarding those institutions, special regulations are made.

TWENTIETH TITLE.

OF MORTGAGE OR HYPOTHECATION.

FIRST SECTION.

General dispositions.

1188. Mortgage or hypothecation is a real right on immoveable goods, for the purpose of recovering thereon the discharge of an obligation.

1189. This right is from its nature indivisible, and is fixed on all the immoveables, affected by it, in their entirety, on each of those immoveables, and on every portion of them.

The immoveables remain charged with it, in whatsoever hands they pass.

1190. Are only susceptible of mortgage :

1. Immoveable goods, which are in trade, with their appendages, for as far as these latter are accounted immoveable ;
2. The usufruct of such goods and their appendages ;
3. The rights of building and emphytensis ;
4. Ground-rents due either in money or in kind.

1191. The mortgages extend over all the later improvements of the thing encumbered, also over that, which is united to the thing, by accretion or building.

1192. The undivided share in an immoveable in common can be charged with mortgage. After the division of it, the mortgage remains only on the part which is allotted to the debtor, who has given the mortgage ; saving the disposition of art. 1358.

1193. Moveable goods are not susceptible of mortgage.

1194. Mortgage cannot be established except by him, who has the authority to alienate the thing encumbered.

1195. Those who have on an immoveable only such a right, as is suspended by a condition, or can be dissolved or annulled in certain cases, cannot grant a mortgage, except subject to the same conditions, dissolution or annulment.

1196. Goods of minors, of those who are placed under curatorship, and of absentees, as long as the possession thereof is only conferred provisionally, cannot be encumbered with mortgage otherwise, than

for the causes and in conformity with the formalities, established by the law.

1197. Mortgage can only be granted by a notarial act, except in the cases expressly indicated by the law.

The mandate to grant mortgage must be passed by authentic act.

The guardian, the curator, the husband, or any other, who by the force of the law or of an agreement, is bound to give mortgage, can be compelled thereto by sentence, which shall have the same force, as if he had consented to the mortgage, and which shall specially designate the goods, on which the inscription shall be made.

The wife, who in her marriage-contract has made stipulation for a mortgage, can without the assistance of her husband, or without authority from the judge, effect the hypothecary inscriptions and institute the actions required thereto.

1198. By the force of an agreement, passed in a foreign country, no mortgage can be inscribed on goods situated in a colony, unless the contrary be stipulated in treaties.

1199. The act, by which mortgage is established, must contain a special designation of the immoveable encumbered, and of its nature and situation.

In regard of ground-rents, concerning which no special designation can be made, as to what particular parcels of land are charged therewith, it will suffice that a just description and indication be made in the act, of the tract subject to the charge.

1200. Mortgage can only be established on present property. A mortgage upon future property is null.

If however the wife has made stipulation for a mortgage, in her marriage-contract, or in general a debtor has bound himself to give mortgage to a creditor, the husband or the debtor can be compelled to perform his obligation, by indicating goods also, which he may have acquired since the obligation originated.

1201. A mortgage is only valid, in as far as the sum, for which it is granted, is certain and specified in the act.

If the debt be conditional or the amount thereof indeterminate, the mortgage shall only be valid to the amount of the estimated value, which parties shall be holden to indicate in the act.

1202. The creditor can, in no case, demand an augmentation of the mortgage, unless the contrary be agreed for, or directed by the law.

1203. All stipulations, by which the creditor would be authorized to appropriate to himself the thing mortgaged, are null.

The first mortgage creditor is however at liberty, at the establishment of the mortgage, to stipulate expressly, that, in default of the proper discharge of the capital, or of the payment of the interests due, he shall be irrevocably empowered to cause the public sale of the immoveable bound, in order to recover on the proceeds the capital as well as the interests and expenses.

This stipulation must be noted in the public registers, and the public sale must be made in the manner as prescribed in art. 1235, with this exception only that the presence of the cantonjudge shall not be requisite.

SECOND SECTION.

Of the inscription of mortgages and the form of the inscriptions.

1204. The inscription of mortgage bonds must take place in the public registers destined for this purpose.

In default of this inscription the mortgage shall have no force whatsoever, not even in regard of creditors, who have no mortgage bond.

1205. The inscription of a mortgage is void, if it has been made at a time, when the property of the thing having passed to a third party, the debtor had already lost his right of property in it.

1206. The rank of the mortgage creditors is determined by the date of their inscription, saving the exceptions mentioned in the two following articles.

Those, who are inscribed on the same day, have jointly a mortgage of the same date, without regard to the hour, at which the inscription has been made, even though the hour may have been noted by the conservator.

1207. If in the act of transfer, mortgage has been stipulated on the thing sold, as a security for purchase-money unpaid, and the inscription has taken place within eight free days subsequent to the transcription of the act of transfer on the public registers, destined for that purpose, this mortgage shall have priority over the mortgages, which the purchaser may have granted on the immoveable, in this interval.

1208. The same disposition is applicable, if in an act of partition, mortgage has been stipulated as a guarantee of what remains due by one co-parcener to the other, in consequence of a partition, or as a warranty of the thing allotted. In this case also the inscriptions, effected by the co-parcener within eight free days, subsequent to the transcription of the act of partition, for as far as regards this stipulation, shall have priority over the mortgages, which the party, acquiring the property, may have granted on the thing, during this interval.

1209. The creditor, who is inscribed for a capital, producing interests or rents, has a right to be placed for two years at most, and for the current year's interests and rents, in the same rank of mortgage as for his capital; without prejudice to his right of taking particular inscriptions, regarding other rents than those secured at the first inscription, and which will import mortgage, counting from their date.

1210. If the act, by which the mortgage is established, contains an express stipulation, by which the debtor is curtailed in his authority, either of being able to lease the immoveable encumbered, without the consent of the creditor, or in regard of the manner in which, or the time during which it may be leased, or in regard of the payment of the hire in advance, such stipulation shall not only be binding between the parties, but can also be invoked against the lessee by the creditor, who shall have caused such stipulation to be noted on the public registers.

All this without prejudice to the dispositions of art. 1358, which, when there are terms for it, can be invoked by all the creditors, whether there be any restrictive stipulation made or not on the subject of the lease or advance payment.

1211. In order to effect the inscription, the creditor in person, or by a third party, shall hand to the conservator of mortgages of the circuit, in which the goods are situated, two schedules signed by the creditor or the third party, one of which can be made on the issued copy of the title.

These schedules contain :

1. A positive designation of the creditor and of the debtor, and indication of the domicile elected by the firstnamed within the circuit of the office of the conservator.

The inscription over the goods of a person deceased, can be made on the name of the defunct ;

2. The date and the nature of the legal title, with designation of the functionary by or before whom the act is passed or of the judge who has designated the goods to be affected by the mortgage, in conformity with the penultimate part of art. 1197 ;
3. The amount of the active debt, or the estimate of the conditional and indeterminate rights, which are to be secured, likewise the time at which the debt becomes due ;
4. The indication of the nature and situation of the goods, on which the mortgage is established ; saving the disposition of the second part of art. 1199, regarding ground-rents ;
5. The stipulations which may have been made, pursuant to the preceding article, and to the second part of art. 1203 and the second part of art. 1234, between the creditor and the debtor.

1212. The conservator keeps one of the schedules, in order to inscribe it in his register, under the date of the presentation. He returns immediately the other schedule to the person, who has requested the inscription, at foot of which schedule he shall mention the day of presentation. He is finally obliged, if this be demanded, to add subsequently, at the longest within twenty four hours, on this schedule, the number under which the inscription has been made in his registers. Both these declarations shall be signed by him.

1213. At the demand for annotation, of which art. 1134 treats, the creditors or legatees are bound to hand to the conservator of mortgages :

1. An authentic copy of the demand for separation of the goods ;
2. The act of decease of the defunct, or another virtual proof that the action has been commenced within six months after the opening of the succession ;
3. Two schedules containing, according to the direction of art. 1211 No. 4, the indication of the nature and situation of the goods, on the margin of which the annotation is demanded ; the dispositions of art. 1212 being applicable to these schedules.

1214. It is permissive to the party, who has caused an inscription to be made, likewise to his representatives, or to those who by au

authentic act have acquired his right, to change upon the register of mortgages the domicile elected by him, on condition of choosing and pointing out another within the same circuit.

1215. The inscription cannot be annulled on account of neglect of the formalities prescribed hereabove, except only in the event that it does not designate, in a satisfactory manner, the creditor, the debtor, the debt, or the thing encumbered.

1216. The inscription causes the mortgage to be maintained during fifteen years from its date. It ceases to have effect, if it is not renewed before the expiration of this period.

The above dispositions are also applicable to the renewal of inscriptions.

1217. The expenses of the inscription are for account of the debtor, if the contrary is not stipulated.

1218. The actions against the creditors, to which the inscriptions can give rise, must be instituted before the competent judge, by means of citations made to them personally, or to the last domicile elected according to the register; and this notwithstanding the death, either of the creditor, or of those with whom they have made election of domicile.

THIRD SECTION.

Of the cancellation of inscriptions.

1219. Inscriptions are cancelled at the cost of the debtor, either by the consent of the parties interested, qualified thereto, or by virtue of a sentence, either passed in the last resort, or having obtained force of judgment.

1220. In both cases, they who require the cancellation shall lay over at the office of the conservator an authentic act, in which consent is given for the cancellation, or an authentic copy of such act, or of the sentence to that effect.

The mandate to consent to the cancellation of a mortgage inscription can only be given by an authentic act.

In case of dispute regarding the qualification of those who have consented to the cancellation, or regarding the validity of the vouchers presented, the high court of justice shall give judgment therein on a simple petition presented, accompanied with the documents.

1221. If a cancellation is not consented to, it must be requested before the high court of justice.

FOURTH SECTION.

Of the effect of mortgages against third parties possessors.

1222. The creditor, who has an inscribed mortgage, pursues his right on the immoveable bound, in whatsoever hands it may be found, in order to be collocated and paid, according to the order of inscription.

1223. The creditor has a right, after having made command to the debtor, to seize in hands of the third party possessor, the immoveable mortgaged, and cause it to be sold.

In this and in the collocation among the several creditors, as regards the proceeds of the thing, the formalities must be observed, which are prescribed in the Code of Civil Procedure in respect of judicial executions and collocation.

1224. The third party possessor can oppose the sale, if he can show, that there are still to be found in the possession of the original debtor, one or more immoveables jointly mortgaged for the same debt, and evidently sufficient to recover the debt thereon. In such case he may demand, with suspension of the execution of his property, the previous execution of the immoveable jointly mortgaged in hands of the original debtor.

1225. In case a mortgage is established on one immoveable, and one or more portions thereof have passed to third parties possessors, the creditor retains his power of exercising his right in its entirety on the immoveable bound, or on such portion thereof as he shall deem fit or sufficient, as if the immoveable were still undividedly in the possession of the debtor.

1226. The third party possessor who, either at the execution or voluntarily, has discharged the debt, is authorized, as having entered thereby *ipso jure* into the rights of the creditor, to exercise the further rights of mortgage for this debt, on the immoveables jointly mortgaged, or parts of these, after deduction of his share in proportion to the joint value of the goods mortgaged.

1227. In the cases, mentioned in the two preceding articles, the inscription of the mortgage shall only be cancelled over the immoveable or the part of it, on which the debt has been recovered, or for which the third party possessor has discharged the debt, and over the other mortgaged property not sooner, than until the third party possessor, who has paid or suffered the execution, shall have exercised his right according to the penultimate article, or shall have consented to the cancellation.

The subrogated creditor is bound, in order to secure his right, to cause annotation to be made thereof on the ordinary registers.

1228. The third party possessor has always the right, until the moment of the adjudication, to cause the execution on the property mortgaged and possessed by him, to cease, by discharging the debt inscribed with the rents, according to article 1209, likewise the expenses.

1229. The proceeds by execution of the immoveable mortgaged, over and above the amount of the hypothecary charges and expenses, shall be paid out to the third party possessor.

1230. The servitudes and other real rights to the charge as well as to the benefit of the immoveable executed, which were extinguished by transmission to the third party possessor, revive after it shall have been adjudicated to another.

1231. The deteriorations caused to the immoveable by the fault or negligence of the third party possessor, to the prejudice of the mortgage creditors, afford ground for an action of indemnity against him; he cannot reclaim the expenses and improvements made by him, except, to the amount of the increased value of the thing, resulting from the improvements.

1232. The third party possessor, who has paid the mortgage debt, or has suffered execution therefor, has his recourse for warranty against the debtor.

FIFTH SECTION.

Of the extinction of mortgages.

1233. Mortgages are extinguished :

1. By the extinction of the principal obligation ;
2. By the renunciation of the mortgage, by the creditor ;
3. By judicial collocation.

1234. He, who has bought the immoveable mortgaged, either at an execution sale, or in consequence of a voluntary sale, for a price paid in money, can demand that the property bought be purged of all hypothecary charges, which exceed the price of purchase, with observance of the rules laid down in the following articles.

The purge shall however not take place in the event of a voluntary sale, if parties at the establishment of the mortgage have expressly made such agreement, and this stipulation be noted on the public registers.

Such stipulation can only be made by the first mortgage creditor.

1235. In case of a voluntary sale the demand for purge shall not be permitted to be made, unless the sale has taken place in public, according to local usages, before a public functionary and in the presence of the cantonjudge of the district, where all or the majority of the goods are situated ; and furthermore unless the creditors inscribed have been notified, at least thirty days before the adjudication, by a writ, which shall be served at the domiciles elected by the creditors at the inscription.

1236. The purchaser, who desires to have the benefit of the privilege, mentioned in art. 1234, is bound, within one month after the adjudication, to cause a judicial collocation to be opened, for the distribution of the purchase-money, in conformity with the rules prescribed in the Code of Civil Procedure.

1237. At the collocation the cancellation shall be commanded of those inscriptions, which are collocated as not profitable.

Such inscriptions as are only found profitable for a part, shall be maintained only for that part, until payment, which the creditor is at liberty immediately to demand, without regard whether the debts be due or not due.

In respect of debts, of which the entire amount is collocated as profitable, the inscriptions shall be maintained, and the purchaser shall remain bound to the same obligations, and enjoy the same terms and delays, as the original debtor.

1238. In summing up the amount of hypothecary inscriptions, the perpetual rent shall be calculated by the capital, mentioned in the act, and in default thereof, by the sum obtained in multiplying the amount of the rent with twelve and a half ; life-annuities or lifelong pensions shall be calculated and capitalized, according to the age of the enjoyer, or of the person on whose life the annuity is established, or according to the time during which the enjoyment must continue ; all this corresponding with the ordinary value of the life-annuities, according to estimate of experts.

1239. Inscriptions on the properties of guardians, curators and husbands, in favour of minors, persons placed under curatorship or

married women, and in general, all inscriptions for debts proceeding from obligations which are conditional or of an undeterminate amount for as far as they have been collocated in whole or in part as profitable, shall be maintained to the charge of the immoveable sold, until the time when, after the expiration of the guardianship or curatorship, the dissolution of the marriage, or the ultimate result of the conditional or undeterminate obligation, it shall become evident whether, and to what amount the mortgage creditors are entitled to the purchase-money.

1240. The purchaser retains the purchase-money under him, to the amount, wherewith the immoveable remains charged in pursuance of the preceding article; if in the conditions of sale no other provision is made in this respect, he shall be bound to pay to the seller or to other parties entitled to it, the legal interests of this sum, until the period of the final payment of the purchase-money.

1241. If however the purchaser, or his successors impair or neglect the property in such manner, that the security of parties interested could thereby be diminished or lost, such parties are authorized to demand in law, that the unpaid purchase-money be immediately redeemed and invested either in mortgage inscriptions on other immoveables, or in inscriptions on the ledger of the national debt; in both cases subject to the same bond, and to the same provisions, as if the purchase-money had remained with the purchaser or his successors; all this without prejudice to the compensation of costs, damages and interests, if there are grounds for such.

If the demand for immediate redemption, alluded to in the previous part, be granted, the judge shall at the same time appoint a competent person, who shall be charged with the receipt of the purchase-money and the investment.

1242. If, in the case of art. 1239, it ultimately results, that the person, in favour of whom the inscription has been made, has nothing to claim, or less than the sum originally inscribed, the bond shall be cancelled, and the unpaid purchase-money shall be paid out either for the benefit of the mortgage creditors, whose inscriptions were collocated in whole or in part as not profitable, this with observance of the order in which they were placed, — or for the benefit of the original proprietor of the estate, or other parties having a right.

1243. If on account of inscriptions, alluded to in the same art. 1239, later ones have been collocated in whole or in part, as not profitable, and accordingly have to be cancelled, the judge shall command in the sentence of collocation, that the conservator of mortgages shall note *ex officio* on the registers, next to the cancellation, that the creditors retain their right on such part of the unpaid purchase-money, as may be left by ultimate result.

1244. If, by a judicial execution, one property, comprising several immoveable goods, of which one or more are unencumbered, and others mortgaged, has been sold in its entirety for one price, the price of each immoveable shall be determined by the judge, in the proportion of the entire purchase-sum, for the benefit of the creditors inscribed on each particular piece of immoveable, and after the hearing of experts.

SIXTH SECTION.

Of the publicity of the registers, and of the responsibility of the conservators of mortgages.

1245. The conservators of mortgages are bound to grant to all those, who require it, insight of their registers, and to deliver a copy of the acts transcribed upon their registers, and of the existing inscriptions and annotations, or otherwise a certificate that none exist.

In all cases they are bound, if inscriptions have formerly existed on the immoveable, and which have subsequently been cancelled, to mention this fact, without any further special designation, on the copy or certificate to be delivered by them.

1246. They are responsible for the injuries resulting :

1. from their neglect in making seasonable and accurate transcriptions, inscriptions, mention of restrictive stipulations and of annotations, which are demanded at their office ;
2. From the omission of mentioning in their certificates the existence of one or more inscriptions, unless in the latter case, the error have proceeded from insufficient designation, which could not be laid to their charge ;
3. From cancellations made without the documents, mentioned in art. 1220, being produced to them ;
4. From the omission of the statement mentioned in the second part of the preceding article.

1247. The duration of the responsibility, laid to the charge of the conservators of mortgages, is limited to ten years, counting, for the omissions alluded to in No. 1 and 3 of the preceding article, from the day on which the legal formalities have been demanded by parties interested, and for those, alluded to in No. 2 and 4 of the same article, from the day of the delivery of the certificates.

1248. The immoveable, regarding which the conservator may have omitted to mention in his certificate one or more charges inscribed, is not released from those charges ; saving the responsibility of the conservator towards the person who has demanded the certificate, in which the error was made, and without prejudice to the recourse of the conservator against the creditors, who have received payment which was not due.

1249. In no case may the conservators of mortgages refuse or delay to transcribe acts, by which property is transferred, to inscribe hypothecary rights, to give insight of their registers, or to deliver certificates required, under penalty of the compensation of costs, damages and interests to the parties ; for the purpose of which, at the instance of the parties requiring it, a notary or marshal, with two witnesses, shall draw a report of the conservator's refusal or delay.

THIRD BOOK.
OF OBLIGATIONS.

FIRST TITLE.

OF OBLIGATIONS IN GENERAL.

FIRST SECTION.

General dispositions.

1250. All obligations originate, either from agreement, or from the law.

1251. Their object is to give, to do, or not to do something.

SECOND SECTION.

Of obligations to give something.

1252. In the obligation to give something is included that of delivering the thing, and of taking care for its preservation, as a good father of a family, until the moment of the delivery.

This last obligation is more or less extensive, as regards certain agreements, the effects of which, in this respect, are indicated in the titles, which apply to them.

1253. The debtor is bound towards the creditor to the compensation of costs, damages and interests, if he has placed himself in the impossibility to deliver the thing, or has not taken proper care for its preservation.

1254. In an obligation to give a particular thing, this thing is for account of the creditor, from the moment of the obligation. In the event of neglect of the debtor to deliver the thing, it is, from the moment of the neglect, for his account.

1255. The debtor is put in default, either by a sommation or other similar act, or by the effect of the agreement itself, when it imports that the debtor shall be in default, by the sole lapse of the term specified.

THIRD SECTION.

Of obligations to do or not to do something.

1256. All obligations to do or not to do something, are solved in the compensation of costs, damages and interests, in the event that the debtor does not comply with his obligation.

1257. Nevertheless the creditor has a right to demand the destruction of what has been done in contravention of the obligation, and he can cause himself to be authorized by the judge to effect, at the cost of the debtor, the destruction of what has been done; without prejudice to the compensation of costs, damages and interests, if there be ground.

1258. The creditor can also, in case the obligation is not performed, be authorized to procure himself the performance of the obligation, at the cost of the debtor.

1259. If the obligation consists of not to do something, he who acts contrary thereto, is by the single act of this contravention, bound to the compensation of costs, damages and interests.

FOURTH SECTION.

Of the compensation of costs, damages and interests, resulting from the non-compliance with an obligation.

1260. Compensation of costs, damages and interests, resulting from the non-compliance with an obligation, is only then due, when the debtor, after having been put in default, remains in delay to fulfil this obligation; or when that, which the debtor was obliged to give or to do, could only have been given or done within a certain time, which he has suffered to pass.

1261. The debtor must be condemned, if there be ground for such, to the compensation of costs, damages and interests, as often as he cannot prove that the non-performance, or the delay in the performance of the obligation, proceeds from a foreign cause, which cannot be imputed to him, although there has been no bad faith on his part.

1262. No compensation of costs, damages and interests shall take place, if the debtor has been prevented by irresistible force or by accident to give or to do something, to which he was bound, or has done something, which was prohibited to him.

1263. The compensation of costs, damages and interests, which the creditor has a right to demand, consists in general, in the loss which he has sustained, and in the profit of which he has been deprived, saving the exceptions and modifications hereafter.

1264. The debtor is only bound to the compensation of costs, damages and interests, which have been foreseen, or might have been foreseen, at the time of contracting the obligation, unless it be attributable to his fraud, that the obligation, has not been performed.

1265. Even when the non-performance of the obligation is attributable to the fraud of the debtor the compensation of costs, damages and interests, as regards the loss sustained by the creditor, and the profit of which he has been deprived, must only comprise that, which is an immediate and direct consequence of the non-performance of the obligation.

1266. If the agreement imports, that he who fails to comply with it, shall pay a certain sum by way of indemnity, no greater nor lesser sum can be awarded to the other party.

1267. In obligations which are confined to the payment of a certain sum of money, the compensation of costs, damages and interests, resulting from delay in the performance, consists only of the interests determined by law; saving the special rules relative to commerce and suretyship.

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This compensation of costs, damages and interests is due, without the creditor being holden to prove any loss.

It is only due, from the day that it has been demanded in law, except in the cases, in which the law makes it run ipsojore.

1268. Interests due on capitals can again produce interests, either as a result of a judicial demand, or by virtue of a special agreement, provided the demand or the agreement be in regard of interests, due at least for a whole year.

1269. Nevertheless revenues due, such as rents of farms and houses perpetual rents or life-annuities, produce interests from the day that the demand is made or the agreement concluded.

The same rule is applicable to the restoration of fruits and to interests, paid by a third party to the creditor, in discharge of the debtor.

FIFTH SECTION.

Of conditional obligations.

1270. An obligation is conditional, when it is made to depend on a future and uncertain event, either by suspending the obligation until such event happens, or by rescinding the obligation, accordingly as the event happens or not.

1271. All conditions to do something, which is impossible, contrary to good morals, or prohibited by the law, are null, and render void the agreement, which is made to depend thereon.

1272. The condition of not to do something, which is impossible, does not render void the obligation, contracted under such condition.

1273. All obligations are null, if their performance depends solely on the will of him, who is bound. If however the obligation depends on an act, the accomplishment of which is in his power, and such act has taken place, the obligation shall be valid.

1274. All conditions must be accomplished in such manner, as parties have apparently desired and understood.

1275. If an obligation depends on the condition, that a certain event shall happen within a fixed time, the condition shall be deemed to have failed, if the time has expired, without the event having happened.

If the time is not fixed, the condition can always be accomplished, and it shall not be deemed to have failed, before it is certain, that the event will not happen.

1276. If an obligation depends on the condition, that a certain thing shall not happen within a fixed time, such condition is accomplished, if the time has expired, without the thing in question having happened.

The condition is likewise accomplished, if before the expiration of that time, it is certain that the event will not take place; but when no time has been fixed, the condition is not accomplished, before it is certain that the thing in question will not happen.

CENTRALE BOEKERIJ

Kon. Inst. v. d. Tropen

AMSTERDAM

1277. The condition is taken to be accomplished, if the debtor, who has bound himself subject thereto, has prevented the accomplishment of the condition.

1278. If the condition is accomplished, it has a retroactive effect to the time, at which the obligation originated.

In case of the death of the creditor, before the accomplishment of the condition, his rights devolve accordingly upon his heirs.

1279. The creditor can, before the accomplishment of the condition, resort to all means, which are necessary for the preservation of his right.

1280. An obligation under a suspensive condition is such a one, which depends either on a future and uncertain event, or a thing, which already happened, but yet unknown to the parties.

In the first case the obligation cannot be executed until after the event has happened; in the second case the obligation is in force, from the day that it originated.

1281. If the obligation depends upon a suspensive condition, the thing which constitutes the subject matter of the obligation, remains for account of the debtor, who is only bound to deliver it when the condition is accomplished.

If the thing has perished entirely without the fault of the debtor, no obligation remains either from the one or from the other side.

If the thing has diminished in value, without the fault of the debtor, the creditor has the choice either of breaking the obligation, or of demanding the thing in the state in which it shall be found, without any diminution of the promised price.

If the thing has diminished in value by the fault of the debtor, the creditor has a right either of breaking the obligation, or of demanding the thing in the state in which it shall be found, with compensation of costs, damages and interests.

1282. A resolutive condition is such a one, which, after its accomplishment, causes the obligation to cease, and things to be restored to their former condition, as if no obligation had existed.

This condition does not suspend the performance of the obligation; it only obliges the creditor to restore what he has received, in case the event, alluded to in the condition, happens.

1283. The resolutive condition is always presumed to take place in synallagmatical contracts, in case one of the parties does not comply with his obligation.

In such case the agreement is not ipso jure dissolved, but the dissolution must be demanded in law.

This demand must also be made, even when the resolutive condition, on account of the non-compliance with the obligation, may be expressed in the agreement.

If the resolutive condition is not expressed in the agreement, the judge is at liberty, according to circumstances, to grant to the defendant, at his request, a delay to comply as yet with his obligation, which delay however may not exceed the term of one month.

1284. He, towards whom the obligation has not been performed, has the option either to compel the other party to the performance of the agreement, if such be possible, or to demand the dissolution thereof with compensation of costs, damages and interests.

SIXTH SECTION.

Of obligations with a term.

1285. A term does not suspend the obligation, but only its execution.

1286. That which is only due on term, cannot be demanded before the term is expired; but what has been paid in advance, cannot be reclaimed.

1287. A term is always presumed to have been stipulated in favour of the debtor; unless from the nature of the obligation itself, or from circumstances, it may result that the stipulation of time was made in favour of the creditor.

1288. The debtor can no longer claim the benefit of an additional term, when he is declared in a state of failure or of notorious insolvency, or when by his fault the security given by him in favour of the creditor, has been diminished.

SEVENTH SECTION.

Of alternative obligations, or of obligations which are at the choice of one of the parties.

1289. In alternative obligations the debtor is discharged by the delivery of one of the two things, which are comprised in the obligation; but he cannot compel the creditor to receive a part of the one and a part of the other thing.

1290. The choice belongs to the debtor if it has not been expressly granted to the creditor.

1291. An obligation is pure and simple, although contracted at choice, or in an alternative manner, if one of the two things promised could not constitute the subject of an obligation.

1292. An alternative obligation is pure and simple, if one of the promised things perishes, or can no longer be delivered, even by the fault of the debtor. The value of such thing cannot be offered in its stead.

If both the things have perished, and the debtor is the cause of the loss of one of the two, he must pay the value of that thing, which has perished the last.

1293. If in the cases, mentioned in the preceding article, the choice has been left to the creditor, and only one of the things has perished, the creditor must have the thing which remains, if the loss took place without the fault of the debtor; if this happened by the fault of the debtor, the creditor may either demand the remaining thing, or the value of the one that has perished.

In the event that both the things have perished, and if the loss as regards both, or even one of them is attributable to the fault of the debtor, the creditor can at his choice demand the value of the one or of the other thing.

1294. The same principles are valid in the event that more than two things are comprised in the obligation, as well as when the object of the obligation is to do or not to do something.

EIGHT SECTION.

Of obligations joint and several.

1295. An obligation is joint and several among sundry creditors, when the title gives expressly to each of them the right to demand payment of the whole debt, in such way, that payment made to one of them, discharges the debtor, even though the obligation, from its nature, may be partible and divisible among the several creditors.

1296. It stands to the choice of the debtor to pay to the one or the other of the creditors, as long as he is not attacked in law by one of them.

Nevertheless the remission, made by one of the joint and several creditors, does not discharge the debtor any farther, than for the share of such creditor.

1297. An obligation is joint and several on the part of the debtors, when they are all bound to one and the same thing, in such manner that each of them can be attacked for the entirety, and that payment, made by one of them, discharges the other debtors towards the creditor.

1298. An obligation may be joint and several, although one of the debtors may be bound, differently from the others, to the payment of the same thing, as for example, if the one is only bound conditionally, while the obligation of the other is pure and simple, or if one has stipulated a term, which is not granted to the other.

1299. No obligation is presumed to be joint and several unless it be expressly stipulated.

This rule only suffers exception in the cases, in which an obligation by virtue of a disposition of the law, is held to be joint and several.

1300. The creditor of a joint and several obligation can attack such one of the debtors, as he chooses, without this one being able to object to him the benefit of division.

1301. The prosecutions, directed against one of the debtors, do not prevent the creditor from exercising his right against the others also.

1302. If the thing due happens to perish by the fault of one or more of the joint and several debtors, or after they were put in default, the other joint-debtors are not relieved from the obligation of paying the value of the thing; but these are not bound to the compensation of costs, damages and interests.

The creditor can only recover the compensation of costs, damages and interests, against the debtors, by whose fault the thing has perished, as well as against those, who have been in delay of payment.

1303. The demand for payment of interests made against one of the joint and several debtors, causes the interests to run in respect of all the others.

1304. A debtor joint and several, being attacked in law by the creditor, can avail himself of all exceptions, arising from the nature of the obligation and of all those, which are personal to himself, likewise of all those which are common to all the joint-debtors.

He cannot avail himself of such exceptions, which are purely personal to some of the other joint-debtors.

1305. If one of the debtors becomes sole heir of the creditor, or if the creditor becomes sole heir of one of the debtors, this confusion of debts does not extinguish the joint and several debt, except in as far as regards, the share of such debtor or creditor.

1306. The creditor having consented to the division of the debt in regard of one of the joint-debtors, preserves his joint and several action against the others, but subject to a deduction of the share of the debtor, whom he has released from the joint and several obligation.

1307. A creditor who receives separately the share of one of the debtors, without reserving in the acquittance his joint and several right, or his rights in general, does not renounce his joint and several right, except as regard this debtor.

A creditor is not considered to have released the debtor from his joint and several obligation, when he receives from him a sum equal to the amount of his share in the debt, if the acquittance does not contain word by word, that what has been received will go for his share.

It is the same also with regard to the demand, made against one of the joint-debtors only for his share, as long as this debtor has not acquiesced in the demand, or no judicial condemnation has followed on the demand.

1308. A creditor, who receives separately and without reserve, the share of one of the joint-debtors in arrears of rents or interests of a debt, loses his joint and several right only as regards the arrears of rents or interests, and not as regards those yet to become due, or the capital, unless the separate payment have taken place during ten consecutive years.

1309. An obligation, although joint and several in regard of the creditor, is nevertheless *ipso jure* divisible among the debtors, who among themselves are not further bound than each for his share.

1310. The joint-debtor of a joint and several obligation, who has paid the entire debt, cannot reclaim from the others any more, than what the share of each of them amounts to.

If one of them is insolvent, the loss, caused by his insolvency, shall be divided *pro-rata* among the other debtors, who can pay, and the one, who has discharged the debt.

1311. In case the creditor has released one of the debtors from his joint and several obligation, and one or more of the other debtors have become insolvent, the share of the insolvents shall be assessed pro-rata on all the debtors, even on those, who were previously released from the joint and several obligation.

1312. If the thing, for which sundry persons have bound themselves as joint and several debtors, regards only one of them, they are actually bound towards the creditor, each for the entirety, but among themselves they are considered as sureties for him, whom the thing concerns, and they must accordingly be indemnified by him.

NINTH SECTION.

Of obligations divisible and indivisible.

1313. An obligation is divisible or indivisible, accordingly as the subject-matter is either a thing, which in its delivery, or an act, which in its execution, is or is not susceptible of division, either corporeal or incorporeal.

1314. An obligation is indivisible, although the thing or act, which is the subject-matter thereof, be divisible from its nature, if the tendency of the obligation does not render it susceptible of partial execution.

1315. The joint and severalty of an obligation does not give it in any way the character of indivisibility.

1316. The obligation, which is susceptible of division, must be executed between the debtor and the creditor, as if it were indivisible; the divisibility is only applicable with respect to their heirs, who cannot demand the debt, or who are not bound to discharge it, but only for the share, in which they are heirs, or in which they are bound as representing the creditor or the debtor.

1317. The principle, established in the preceding article, admits of exception respecting the heirs of the debtor :

1. In case it regards a mortgage debt ;
2. When the debt consists in a particular thing ;
3. In regard of an alternative debt of things at the choice of the creditor, if one of the things is indivisible ;
4. If in the title one of the heirs alone is charged with the execution of the obligation ;
5. If, either from the nature of the obligation, or from the thing, which is the subject-matter thereof, or from the purpose which has been contemplated in the agreement, it is evident that it has been the intention of the contracting parties, that the debt should not be discharged in parts.

In the three first cases the heir, who is in possession of the thing due or of the immoveable which is charged with mortgage for the debt, can be prosecuted for the whole upon the thing due, or upon the immoveable encumbered with mortgage ; saving his recourse against his co-heirs.

In the fourth case the heir, who is alone charged with the debt, and in the fifth case every heir also, can be prosecuted for the whole ; saving the recourse of the latter against his co-heirs.

1318. Each one of those, who are jointly bound to an indivisible debt, is responsible for the total thereof, although the obligation may not have been contracted jointly and severally.

1319. The same applies to the heirs of him, who is bound to a similar obligation.

1320. Every heir of the creditor can demand the execution of an indivisible obligation in its entirety.

None of them alone may remit the whole debt, neither receive the value in place of the thing.

If only one of the heirs has remitted the debt, or received the value of the thing, his co-heirs may not demand the indivisible thing, unless they bring in account the share of the co-heir, who has remitted the debt or received the value.

TENTH SECTION.

Of obligations with penal clauses.

1321. The penal clause is such a stipulation, by which a person, as a security for the performance of an obligation, is bound to something determinate, in case the obligation be not fulfilled.

1322. The nullity of the principal obligation renders the penal clause likewise null.

The nullity of the penal clause does not at all cause that of the principal obligation.

1323. The creditor can in lieu of claiming the penalty against the debtor, who is in default, demand the performance of the principal obligation.

1324. The penal clause serves in lieu of the compensation of costs damages and interests, which the creditor suffers on account of the non performance of the principal obligation.

He cannot demand at the same time the principal debt and the penalty, unless the latter may have been stipulated against the simple delay.

1325. Whether the original obligation contained or did not contain a term, within which it should be performed, the penalty is not incurred until he, who is bound to give something, or to receive something, or otherwise to do something, has remained in delay thereof.

1326. The penalty can be modified by the judge if the principal obligation is fulfilled in part.

1327. If the original obligation with penal clause relates to an indivisible thing, the penalty is due by the contravention of one only of the heirs of the debtor, and it can be claimed, either in whole from him, who has acted contrary to the obligation, or from each of the co-heirs for his share, saving their recourse against the one, who has caused the penalty to be incurred ; all this without prejudice to the rights of the mortgage creditors.

1328. If the original obligation with penal clause is divisible, the penalty is only incurred by such one of the heirs of the debtor, who acts contrary to the obligation, and only for as far as regards his share in the principal obligation, without there being room for any action against those, who have complied with the obligation.

This rule admits of exception, when the penal clause has been added with the intention, that the payment should not be made partially, and one of the co-heirs has prevented the performance of the obligation in its entirety; in this case the penalty can be demanded in whole from this latter, and from the other co-heirs only for their share; saving their right of recourse.

1329. If a divisible principal obligation with an indivisible penal clause, has only been partly performed, the penalty, in respect of the heirs of the debtor, shall be supplied by a compensation of costs, damages and interests.

SECOND TITLE.

OF OBLIGATIONS, ARISING FROM CONTRACT OR AGREEMENT.

FIRST SECTION.

General dispositions.

1330. A contract is an agreement by which one or more persons bind themselves towards another or several others.

1331. An agreement is contracted gratuitously or by onerous title.

A gratuitous contract is such a one, by which the one party grants, without any advantage, a benefit to the other.

A contract by onerous title is such a one, which subjects each of the parties to give, to do, or not to do something.

1332. In general, no one can bind himself in his own name, or stipulate something, except for himself.

1333. Nevertheless one can make himself strong or vouch for a third party, by promising that the latter shall do something; saving the claim for indemnity against him, who has vouched for a third party, or promised to make him ratify something, if this third party refuses to comply with the obligation.

1334. One can also stipulate something in behalf of a third party, when a stipulation, which one makes for himself, or a donation, which one makes to another, contains such a condition.

He who has made such a stipulation, can no longer revoke it, if the third party has declared his readiness to avail himself of it.

1335. One is presumed to have stipulated for himself and for his heirs and assigns, unless the contrary be expressly determined, or may result from the nature of the agreement.

1336. All contracts, whether they have a proper denomination, or whether they are not known by any particular denomination, are subjected to general rules, which constitute the subject of this and of the preceding title.

The particular rules regarding special agreements are given in the titles, treating of each of these agreements, and the particular rules regarding commercial affairs are established in the laws respecting commerce.

SECOND SECTION.

Of the conditions essential to the validity of agreements.

1337. Four conditions are essential to the validity of agreements :

1. The consent of those, who bind themselves ;
2. The capacity to contract an obligation ;
3. A determinate subject ;
4. A licit cause.

1338. No consent is valid, if it has been given by error, extorted by violence, or obtained by fraud.

1339. Error does not render an agreement null, except when it occurs in respect of the substance of the thing, which is the subject-matter of the agreement.

Error is not a cause for nullity, when it occurs only regarding the person, with whom one intends to contract, unless the agreement be contracted principally from consideration of this person.

1340. Violence committed against him, who has contracted an obligation, gives cause for the nullity of the agreement, even when it has been committed by a third party, for whose benefit the agreement has not been made.

1341. There is violence, when it is of such a nature as to make an impression upon a reasonable man, and when it can inspire him with the fear, that he would expose his person or his fortune to a considerable injury actually present.

In judging this, regard must be paid to the age, the sex, and the condition of the persons.

1342. Violence renders an agreement null, not only when it has been committed against one of the contracting parties, but also against his spouse, or his blood relations in the ascending or descending line.

1343. The fear only proceeding from reverence towards father, mother or other relations in the ascending line, without any additional violence, is insufficient to annul an agreement.

1344. One can no longer object to an agreement, for cause of violence, if after the cessation of the violence, such agreement has been approved, either expressly or tacitly, or if one has allowed the time to pass by, which the law appoints to obtain relief.

1345. Fraud gives cause for the rescission of an agreement, when the stratagems practised by one of the parties, are of such a nature, that it is evident, that without those stratagems the other party would not have contracted the obligation. Fraud is not to be presumed, but must be proven.

1346. Every one is qualified to contract obligations, if he is not declared by the law incapable thereto.

1347. Are incapable to contract obligations :

1. Minors ;
2. Those placed under curatorship ;
3. Married women, in the cases provided for by the law ; and in general all those to whom the law has forbidden to make certain agreements.

1348. The persons, declared incapable by the preceding article, can accordingly object to their obligations in all the cases, in which this power is not excluded by the law.

Persons capable of binding themselves can in no manner avail themselves of the incapacity of the minors, persons placed under curatorship, and married women, with whom they have contracted.

1349. Things only, which are in trade, can be the subject-matter of agreements.

1350. An agreement must have for its object a thing, which is determinate at least as regards its kind.

The quantity of the thing may be uncertain, provided this quantity be capable of being determined or decided afterwards.

1351. Future things may be the subject-matter of an agreement.

One can however not renounce an inheritance not yet opened, nor make any stipulation regarding such a succession, not even with consent of the person, whose succession it regards ; saving the dispositions of articles 218, 225 and 227.

1352. An agreement without a cause, or contracted from a false or illicit cause, is void.

1353. If no cause is expressed, but yet there exists a licit one, or also if there exists a licit cause other than the one expressed, the agreement is nevertheless valid.

1354. A cause is illicit, when it is prohibited by the law, or when it is contrary to good morals or to public order.

THIRD SECTION.

Of the effect of agreements.

1355. All agreements legally made serve as law to those, who have contracted them.

They cannot be revoked except with mutual consent, or for the causes, which the law declares sufficient thereto.

They must be executed in good faith.

1356. Agreements do not only bind, to that which is expressly determined therein, but also to everything, which according to the nature of the agreements, is required by equity, usage or law.

1357. Agreements have no effect but between the contracting parties.

They cannot tend to the injury of third parties ; they cannot bring profit to third parties, except in the case provided for by article 1334.

1358. Nevertheless the creditors can in their own name object to the acts, which are done by the debtor in fraud of their rights ; provided they conform themselves for the rest to the prescriptions of the law, regarding the nature of the act, to which they intend to object.

If the act be contracted by onerous title, the creditors must prove, that there has been fraud on the side of both parties.

If the act be gratuitous, it suffices that there be fraud on the part of the debtor alone.

FOURTH SECTION.

Of the interpretation of agreements.

1359. If the wordings of an agreement are plain, one may not deviate therefrom by interpretation.

1360. If the wordings of an agreement are susceptible of different interpretations, one must rather scrutinize which have been the intention of the contracting parties, than bind oneself to the literal sense of the words.

1361. If a clause is susceptible of two meanings, it must rather be taken in the sense, in which it can have some effect, than in that in which it could not produce any the least effect.

1362. The wording susceptible of two meanings must be taken in the sense, which corresponds best with the nature of the agreement.

1363. Whatever is ambiguous must be interpreted according to what is customary in the country or at the place, where the agreement is contracted.

1364. Clauses, usually customary, are considered to be tacitly included in the agreement, although they are not expressed therein.

1365. All clauses made in an agreement, must be taken in their connection, and interpreted the one by the other ; each of them must be taken in the sense which is agreeable with the entire purport of the agreement.

1366. In case of doubt, an agreement is interpreted against him, who has stipulated something, and in favour of him, who has bound himself.

1367. However general the wordings may be in which an agreement is made, it comprises nevertheless only those things, respecting which it appears that parties intended to contract.

1368. If in an agreement a case has been expressed, in order to explain the obligation, one is not considered to have desired thereby to curtail and restrict the lawful binding force, which the agreement has in the cases not expressed.

THIRD TITLE.

OF OBLIGATIONS, WHICH ARISE FROM THE FORCE OF LAW.

1369. Obligations, which arise from the force of law, originate either from the law alone, or from the law in consequence of man's action.

1370. Obligations which arise from the force of law, in consequence of man's action, proceed either from a lawful, or from an unlawful act.

1371. When any one manages the affair of another voluntarily, without having received a mandate thereto, whether it be with or without the others knowledge, he thereby tacitly binds himself to continue and complete the management, until the person, whose affairs he manages, be in condition to provide for the affair himself.

He must likewise take charge of everything that belongs to the affair.

He subjects himself to all the obligations, which he would have been bound to fulfil, in case he had been authorized by an express mandate.

1372. He is bound to continue his administration, even though the person, whose affair he manages, may happen to die before the affair is terminated, until such time that the heir can take this administration upon himself.

1373. He is bound respecting this administration, to comply with all the duties of a good father of a family.

Nevertheless the judge is authorized to moderate the compensation of costs, damages and interests, which may have been occasioned by the fault or neglect of the manager, according to the circumstance, which led him to the management of the affair.

1374. He, whose affair has been properly managed by another, is bound to comply with the obligations, contracted by the manager in his name, to indemnify him for all personal obligations contracted by him, and to compensate him for all the usefull or necessary expenses made.

1375. He who has managed the affair of another without mandate, is not entitled to any salary.

1376. Every payment establishes presumption of a debt; what has been paid without being due, can be reclaimed.

As regards natural obligations, which have been discharged voluntarily, there can be no recovery.

1377. He who through mistake, or knowingly, has received a thing, which was not due to him, is bound to restore the thing not due, to the person from whom he has received it.

1378. When any one, who through mistake believing himself debtor, has paid a debt, he is entitled to reclaim from the creditor that which has been paid.

Nevertheless this right ceases in case the creditor has destroyed the promissory note, in consequence of this payment, saving the recourse of the party who has paid, against the real debtor.

1379. He who in bad faith has received a thing, which was not due to him, must restore it with the interests and fruits, counting from the day of the payment; this without prejudice to the compensation of costs, damages and interests, if the thing has suffered any deterioration.

If the thing has perished, even when it happened by accident, he is bound to pay the value with compensation of costs, damages and interests; unless he could prove that the thing would have equally perished, if it had remained with the party, to whom it had to be restored.

1380. If he, who has received in good faith a thing not due, has sold it, it suffices him to restore the price.

If he has in good faith alienated the thing gratuitously, he is not bound to refund anything.

1381. He to whom the thing is restored, is bound to compensate, even to the party who has possessed it in bad faith, for all necessary expenses which have been incurred for the preservation of the thing.

The possessor is entitled to retain the thing meanwhile in his possession, until those expenses have been reimbursed.

1382. Every unlawful act, by which damage is occasioned to another, places him, through whose fault that damage is caused, in the obligation to compensate for it.

1383. Every one is responsible for the damage which he has caused, not only by his act, but also by his negligence or imprudence.

1384. One is responsible not only for the damage, which is caused by his own act, but also for that which is occasioned by the act of persons, for whom one is answerable, or by things which one has under his care.

The father, and in default of him, the mother, are responsible for the damage caused by their minor children, who dwell with them.

Masters, and those who appoint others to manage their affairs, are responsible for the damage caused by their domestics and subordinates, in the functions, in which they have employed them.

Schoolteachers and artisans are responsible for the damage caused by their pupils and apprentices during the time that these are under their supervision.

The responsibility hereabove mentioned ceases, if the father and the mother, the schoolteachers and artisans prove, that they have not been able to prevent the act, for which they would be answerable.

1385. The owner of an animal, or he who makes use of it, as long as it serves to his use, is responsible for the damage, which the animal has caused, whether it be under his supervision and custody, or otherwise strayed or escaped.

1386. The proprietor of a building is responsible for the damage caused by its entire or partial fall, if it is occasioned by a want of preservation, or by a defect in the building or construction.

1387. In case of wilful or involuntary homicide, the remaining spouse, the children or the parents of the person slain, who were wont to be supported by his labour, have an action for indemnity, to be estimated according to the reciprocal position and means of the persons, and according to circumstances.

1388. Wilful or involuntary wounding or maiming of any part of the body, entitles the person wounded to claim, besides the compensation of the expenses of his cure, also that of the damage caused by the wounding or maiming.

These are also estimated according to the reciprocal position and means of the persons and according to circumstances.

This latter disposition is in general applicable to the estimate of damages, occasioned by any offence committed against the person.

1389. The civil action for cause of defamation, outrage or insult, has for its object the compensation of the damage, and the redress of the injury sustained in one's honour and good name.

The judge in estimating the same, shall pay attention to the more or less gravity of the defamation, outrage or insult, likewise to the quality, position and means of the reciprocal parties and to the circumstances.

1390. The injured party can moreover demand, that in the same sentence it be declared, that the act committed is defamatory, outrageous or insulting.

If the injured party demands it, the sentence shall be publicly affixed, by as many copies, and at such place as the judge shall command.

1391. Without prejudice to his liability in indemnity, the defending party can avoid judgment on the demand, mentioned in the preceding article, by offering and actually making before the judge a public declaration, containing that he is sorry for the act committed, that he asks excuse for it, and acknowledges the injured party as a person of honour.

1392. The actions mentioned in the three preceding articles belong also to spouses, parents, grandparents, children and grandchildren for cause of defamation, outrage or insult against their spouses, children, grand-children, parents and grand-parents after their death.

1393. The civil action for cause of defamation, outrage or insult can not be adjudged, if the intention to insult is not apparent, but on the contrary necessary defense, lawful complaint, obligation of giving testimony of the truth, duties of office, post, service, or any lawful situation, or also other lawful or licit views have given equitable ground and rise to the act, which otherwise would have been defamatory or insulting.

1394. Neither can the civil action be adjudged if the truthfulness of the imputation results from a judgment or authentic act.

He however, who manifestly with the sole intention of insulting, even when the truthfulness of the imputation results from a judgment or authentic act, persecutes a person on that subject with insults, is bound to compensate him for the damage, which he suffers thereby.

1395. All actions, which are treated of in the six preceding articles, are invalidated by express remission, or tacitly, if after the insult was committed, and became known to the injured party, such signs of reconciliation or of pardon have been given by him, which are not consistent with the intention of claiming indemnity or redress in honour.

1396. The action for damages, mentioned in art. 1389, is not lost, either by the death of the insulting or that of the insulted party.

1397. The civil action for cause of defamation, outrage or insult shall lapse by the expiration of one year, counting from the day that the act has been committed and was known to the plaintiff.

All other civil actions for damages on account of acts, which can give rise to penal prosecution, cease by the prescription established in respect of this penal prosecution.

FOURTH TITLE.

OF THE EXTINCTION OF OBLIGATIONS.

1398. Obligations are extinguished :

- By payment ;
- By tender of ready payment, followed by consignation or deposit ;
- By novation ;
- By compensation ;
- By confusion ;
- By remission ;
- By the loss of the thing due ;
- By nullity or rescission ;
- By the effect of a resolatory condition, treated of in the first title of this book ; and
- By prescription, which the subject of a separate title.

FIRST SECTION.

Of payment.

1399. An obligation can be discharged by every one, who has an interest therein, such as a joint debtor or a surety.

An obligation can even be discharged by a third party, who has no interest in it, provided such third party act in the name and for the discharge of the debtor, or provided, if he acts in his own name, he be not substituted into the rights of the creditor.

1400. An obligation to do something cannot be discharged by a third party against the consent of the creditor, if the latter has an interest, that the act be performed by the debtor himself.

1401. One must be proprietor of the thing, which is given in payment, and capable of alienating it, in order to make the payment validly.

Nevertheless the payment of a sum of money, or any other thing consumable cannot be reclaimed from him, who in good faith has consumed what was given in payment, although this payment was made by one, who was not the proprietor thereof, or incapable of alienating the thing.

1402. Payment must be made to the creditor, or to one having power from him, or who is authorized by the judge or by the law to receive for him.

Payment made to one, who had no power to receive for the creditor, is valid for as far as the creditor ratifies it, or has been actually benefitted thereby.

1403. Payment made in good faith to one, who is in possession of the active debt, is valid, even when this possessor is afterwards evicted.

1404. Payment made to the creditor, is not valid, if he was not capable of receiving it, except for as far as the debtor may prove that the creditor was actually benefitted by the payment.

1405. Payment made by a debtor to his creditor, notwithstanding a seizure or opposition, is not valid in regard of the creditors, who have made the seizure or opposition; the latter can, pursuant to their right, compel the debtor to pay anew, saving in such case, his recourse against the creditor.

1406. No creditor can be compelled to accept in payment a thing, other than what is due to him, although the thing offered may be of an equal or even of a greater value.

1407. No debtor can oblige his creditor to receive payment of a debt in parts, although such debt may be divisible.

1408. The debtor in a certain and determinate thing, is discharged by the delivery of the thing in the state, in which it was at the time of the delivery, provided the deteriorations, which this thing may have suffered, are not caused by his fault or neglect, neither by the fault or neglect of such persons, for whom he is responsible, and provided also he were not in delay of delivery, previous to the occurrence of those deteriorations.

1409. If the thing, which is due, is only determined as regards its species, the debtor is not bound, in order to be discharged from the debt, to give it of the best kind, but it is not sufficient to him, to give it of the worst.

1410. Payment must be made at the place, stipulated in the agreement; if no place has been appointed therein, payment must be made, when it regards a certain and determinate thing, at the place where the thing, which is the subject-matter of the agreement, was at the time the obligation was contracted.

Except these two cases, payment must be made at the domicile of the creditor, as long as he continues to live at the island, where he resided at the time the obligation was contracted, and otherwise, at the domicile of the debtor.

1411. With regard to rents of houses and farms, alimentary pensions, perpetual rents or life-annuities, interests or capitals loaned, and in general, all that is payable annually or in shorter regular periods, three receipts, showing the payment of three consecutive instalments, establish the presumption, that the previous instalments have also been acquitted, unless the contrary may be proven.

1412. The expenses, incidental to the payment, are at the charge of the debtor.

1413. The debtor of several debts has the right when he makes the payment, to declare, to the discharge of which of those debts, he desires the sum paid to be applied.

1414. The debtor of a debt, bearing interest, cannot, without consent of the creditor, apply the payment which he makes, to the discharge of the capital, in preference to the discharge of the interests.

The payment, which is made on the capital and on the interests, but by which the entire debt is not acquitted, is applied in the first place to the discharge of the interests.

1415. When he, who owes several sums, has accepted an acquittance, by which the creditor has declared, that what he has received is applied specially to the discharge of one of these debts, this debtor can no longer demand, that the payment be considered made in discharge of another debt, unless there have been fraud or surprise on the part of the creditor.

1416. If the acquittance does not contain for which debt the payment is made, the payment must be considered to have been made in discharge of the debt, which the debtor had at that time the most interest to discharge, among those at the same time due; but if all the debts may not be due, the payment shall be considered made in discharge of the debt, which was due, in preference to those not yet due although this first may be less burthensome than the others.

If the debts are of an equal nature, the payment must be applied to the oldest; but all things being equal, the payment is applied to every debt proportionately.

If none of the debts be due, the payment is applied in the same manner as regarding the debts which are due.

1417. Subrogation, or substitution in the rights of the creditor for the benefit of a third person, who pays him, is affected by agreement, or by the force of the law.

1418. This subrogation is affected by agreement.

1. When the creditor, receiving payment from a third person, substitutes him in the rights, actions, privileges and mortgages, which he has against the debtor.

This subrogation must be made expressly and simultaneously with the payment.

2. When the debtor borrows a sum of money, for the purpose of paying his debt, and of substituting the lender into the rights of the creditor, it is essential to render this subrogation valid, that the act of borrow as well as the acquittance be passed by authentic act, and it must be declared in the act of borrow, that the sum has been borrowed in order to make the payment with it; while furthermore the acquittance must contain, that the payment has been made from money advanced for that purpose by the new creditor.

This subrogation is accomplished without the concurrence of the creditor.

1419. Subrogation takes place by the force of the law :

1. For the benefit of him, who, being himself creditor, pays another creditor, who has better right, on account of his privileged debt or mortgage;
2. For the benefit of the purchaser of any immoveable, who employs the purchase-money thereof in payment of the creditors, to whom such immoveable was mortgaged;
3. For the benefit of him, who, being bound with others. or for others to the payment of a debt, had an interest in discharging it;
4. For the benefit of the heir, who, having accepted a succession under benefit of inventory, has paid the debts of the succession from his own means.

1420. The subrogation, established in the preceding articles, takes place as well against the sureties as against the debtors; it cannot curtail the creditor in his rights, if he is only partly paid; in such case he can exercise his rights, as regards what remains due to him, in preference over the one, from whom he has only received a partial payment.

SECOND SECTION.

Of tender of ready payment, followed by consignation or deposit.

1421. If the creditor refuses to receive his payment, the debtor can make him tender of ready payment of what is due, and on the refusal of the creditor to accept the same, place the sum of money or the thing in judicial consignation. Such tender, followed by consignation, discharges the debtor, and has with respect to him the effect of payment, provided it be made in a legal manner; and the thing thus consigned remains for account of the creditor.

1422. In order to make such tender valid, it is necessary :

1. That it be made to a creditor, who is qualified to receive, or to the person who has power to receive for him ;
2. That it be made by one, who is qualified to pay ;
3. That it consists of the entire sum demandable, and the interests, likewise of the expenses which are liquidated, and of a sum of money for the expenses, which are not yet liquidated, with reserve of further liquidation ;
4. That the term be expired, if it has been stipulated in favour of the creditor ;
5. That the condition under which the debt has been contracted, be fulfilled ;
6. That the tender be made at the place where, according to agreement, payment should be made, and if there is no special agreement in this respect, either to the person of the creditor, or at his actual or elected domicile ;
7. That the tender be made by a notary or by a marshal, both with two witnesses.

1423. In order to render a consignation valid, no authorisation from the judge is requisite ; it is sufficient :

1. That it have been preceded by a notice served to the creditor, and containing a designation of the day, hour and place when and where the thing tendered shall be put in consignation ;
2. That the debtor have divested himself of the thing tendered, by depositing it at the place designated by the law, for the reception of consignations, with the interests up to the day of the deposit ;
3. That a proces-verbal be drawn by the notary or by the marshal, both with two witnesses, containing the nature of the coins tendered, the refusal of the creditor to receive them, or that he has not appeared to receive, and finally the actual consignation itself ;
4. That in case the creditor has not appeared to receive, the proces-verbal of consignation be served upon him, with sommation to take away the thing deposited.

1424. The expenses, proceeding from the tender of ready payment and from the consignation, are for account of the creditor, if they have been made legally.

1425. As long as the thing consigned has not been accepted by the creditor, the debtor can withdraw it ; in that case his joint debtors and sureties are not discharged.

1426. When the debtor himself has obtained a sentence, which has acquired force of judgment, and by which his tender has been declared good and valid, he is no longer at liberty, even with the consent of the creditor, to withdraw the thing consigned, to the prejudice of his joint-debtors and sureties.

1427. The joint-debtors and sureties are also discharged, if since the day that the consignment has been notified, the creditor has allowed one year to elapse, without disputing its validity.

1428. The creditor who has consented that the debtor should withdraw the thing consigned, after the consignment had been declared valid by a sentence, having acquired force of judgment, can no longer, in order to obtain payment of his debt, avail himself of the privileges or mortgages, which were attached to it.

1429. In case the thing due consists in a certain object, which must be delivered at the place, where it actually is, the debtor must cause a judicial sommation to be made to the creditor, to take the thing to himself, by an act which must be served to the person of the creditor, or at his domicile, or at the domicile elected for the execution of the agreement.

If this sommation has been made, and the creditor has not take the thing to himself, the debtor can obtain permission from the judge to put it in deposit in another place.

THIRD SECTION.

Of novation.

1430. Novation is effected in three ways :

1. When a debtor contracts for the benefit of his creditor a new obligation of debt, which is substituted for the ancient one, and which latter is thereby extinguished ;
2. When a new debtor is substituted for the former, who is released from his obligation by the creditor ;
3. When in consequence of a new agreement, a new creditor is substituted for the former, towards whom the debtor becomes released from his obligation.

1431. Novation can only take place between persons, who are capable of contracting obligations.

1432. Novation is not to be presumed ; the intention to effect it must clearly result from the act.

1433. Novation, by the substitution of a new debtor, can take place without the concurrence of the first debtor.

1434. Delegation by which a debtor gives to his creditor another debtor, who binds himself towards the creditor, does not operate novation, if the creditor has not expressly declared that he intended to discharge his debtor, who has made the delegation.

1435. The creditor having discharged his debtor, by whom the delegation was made, has no recourse against him, if the delegated person becomes in a state of failure or of notorious insolvency, unless the agreement may contain an express reservation thereof, or that the delegated debtor, already at the moment of the delegation, were openly a bankrupt, or had fallen in embarrassment.

1436. The debtor, who has bound himself towards a new creditor by delegation, and has thereby become discharged towards his former creditor, cannot object to the new creditor the exceptions, which he could have made use of against the first, although they were not known to him at the time of contracting the new obligation ; saving however, in the latter case, his recourse against the original creditor.

1437. The simple indication, made by the debtor, of a person who must pay for him, does not operate novation.

It is the same regarding a simple indication, made by the creditor, of a person who must receive for him.

1438. The privileges and mortgages attached to the old debt, are not transmitted to that, which is substituted for it, unless the creditor have expressly made such reservation.

1439. When the novation is effected by the substitution of a new debtor for the former, the privileges and mortgages, which were attached to the original debt, are not transferred upon the goods of the new debtor.

1440. When the novation takes place between the creditor and one of the joint and several debtors, the privileges and mortgages cannot be reserved, except upon the goods of him, who contracts the new obligation of debt.

1441. By the novation effected between the creditor and one of the joint and several debtors, the other joint debtors are released from their obligation.

Novation, effected in respect of the principal debtor, releases the sureties.

If however the creditor has demanded in the first case, the accession of the joint debtors, and in the second case, that of the sureties, and the joint debtors or sureties refuse to accede to the new arrangement, the old obligation of debt shall continue to subsist.

FOURTH SECTION.

Of compensation.

1442. Two persons being reciprocally each other's debtors, a compensation is effected between them, by which the reciprocal debts are extinguished, in the manner and in the cases mentioned hereafter.

1443. Compensation takes place ipso jure, even without the knowledge of the debtors, and the two debts extinguish each other, as soon as they exist simultaneously to the amount of their respective sums.

1444. Compensation only takes place between two debts, having equally for their object a sum of money, or a certain quantity of consumable things of the same kind, and which are equally susceptible of an immediate liquidation and demand.

Furnishments of provisions, grain and other agricultural produce, which are not contested, can be brought in compensation against sums of money liquidated and demandable.

The price shall be established by experts, in case of difference.

1445. Delay of payment obtained does not prevent compensation.

1446. Compensation takes place from whatever cause the reciprocal debts proceed, except :

1. When restitution is demanded of a thing, of which the proprietor has been unjustly deprived ;
2. When the restitution is demanded of a thing, which is given in deposit or in loan for use (commodate) ;
3. In respect of a debt, which has for its cause aliments, which are declared not liable to seizure.

1447. A surety can bring in compensation that which the creditor owes to the principal debtor ; but the principal debtor cannot bring in compensation that which the creditor owes to the surety.

The joint and several debtor may not in like manner bring in compensation that which the creditor owes to his joint-debtor.

1448. A debtor, who has consented absolutely and simply to the cession of rights, made by the creditor to a third party, can no longer avail himself, against the person in whose favour that cession is made, of the compensation which, before the consent, he might have opposed to his creditor.

The cession of rights, to which the debtor has not consented, but which has been signified to him, only prevents compensation of the debts, which have been contracted subsequent to the signification.

1449. When the reciprocal debts are not payable at the same place, they cannot be brought in compensation except with indemnification of the expenses of remittance.

1450. If there exist several debts susceptible of compensation, and demandable from the same person, one must follow, in regard of the compensation, the rules established in article 1416.

1451. Compensation does not take place to the prejudice of the rights acquired by a third party.

Accordingly he, who being debtor, has become creditor, cannot, after a seizure is made by a third party on what is due by him, avail himself of compensation, to the prejudice of the party making the seizure.

1452. He who has paid a debt, which was of right extinguished by compensation, can no longer in collecting the debt, which he has not brought in compensation avail himself to the prejudice of third parties, of the privileges and mortgages, which were attached to that debt, unless he may have had a lawful excuse of ignorance, regarding the existence of the debt, with which his debt should have been brought in compensation.

FIFTH SECTION.

Of confusion.

1453. When the qualities of creditor and debtor are united in the same person, a confusion is ipso jure effected, by which the claim of debt is extinguished.

1454. The confusion which is effected in the person of the principal debtor, serves likewise to the benefit of his sureties.

That which is effected in the person of the surety, does not at all cause the extinction of the principal obligation.

That which is effected in the person of one of the joint and several debtors, does not extend any farther to the benefit of his joint debtors, except for the portion of the debt, in which he himself was debtor.

SIXTH SECTION.

Of remission.

1455. Remission of a debt is not to be presumed, but must be proven.

1456. The voluntary surrender of an original title under private signature, made by the creditor to the debtor, proves remission of the debt, even in respect of the joint and several debtors.

1457. The remission of a debt, or the discharge by agreement, given for the benefit of one of the joint and several debtors, discharges all the others, unless the creditor may have expressly reserved his rights against these others.

In this latter case he can no longer recover the debt, except with deduction of the share of the party, to whom he has remitted the debt.

1458. The surrender of a thing pledged is not sufficient to cause presumption of the remission of the debt.

1459. Remission of a debt, or discharge by agreement, granted to the principal debtor, releases the sureties.

Remission granted to the surety does not release the principal debtor.

Remission, granted to one of the sureties, does not release the others

1460. What the creditor has received from a surety for the discharge of his suretyship, must be accounted paid as a diminution of the debt, and must serve to the discharge of the principal debtor and of the other sureties.

SEVENTH SECTION.

Of the loss of the thing due.

1461. In case the certain and determinate thing, which formed the subject-matter of the agreement, perishes, gets out of man's trade, or is lost in such manner that its existence is absolutely unknown, the obligation ceases, provided the thing have perished or be lost without the fault of the debtor, and before he was in delay of delivery.

Even when the debtor is in delay of delivering a thing, and he has not vouched for fortuitous events, the obligation is annulled if the thing would equally have perished with the creditor, in case it had been delivered to him.

The debtor is bound to prove the fortuitous event, which he alleges.

In whatsoever manner a thing stolen have perished or be lost, this loss does by no means exonerate him, who has stolen the thing, from the obligation of compensating for the value.

1462. If the thing due has perished, got out of man's trade, or is lost, without the fault of the debtor, the debtor is bound, if he has any rights or claims for indemnity with reference to this thing, to yield them to his creditor.

EIGHTH SECTION.

Of the nullity and of the rescission of obligations.

1463. All obligations, contracted by minors or persons placed under curatorship, are ipso jure null, and must be rescinded on a demand to this effect made by them or in their behalf, on the simple ground of minority or curatorship.

Obligations, contracted by married women and by minors, who have obtained emancipation, are only ipso jure null, for as far as those obligations exceed their authority.

1464. The disposition of the preceding article is not applicable to obligations, arising from an offence committed, or from an act, which has caused damage to another.

Neither can the minority be alleged against obligations, contracted by minors in marriage-contracts, with observance of art. 200.

1465. If the formalities prescribed in favour of minors and persons placed under curatorship, for the validity of certain acts, have been observed, or the father, guardian or curator has performed acts, which do not exceed the bounds of his authority, the minors and persons placed under curatorship shall be considered, with regard to those transactions, as if they had performed them after their majority or free from curatorship; without prejudice to their recourse against the father, guardian or curator, if there are grounds for such.

1466. Obligations contracted through violence, error or fraud, afford ground for an action for their rescission.

1467. For cause of lesion persons of age, and also minors, when they are considered as of age, can only claim the rescission of obligations, in the special cases provided for by the law.

1468. The rescission of obligations, on the ground of the incapacity of the persons mentioned in article 1347, causes the thing and parties to be re-established in the state, in which they were, before the obligation was contracted; with this understanding, that everything what has been delivered or paid to those incompetent persons, as a result of the obligation, can only be revendicated, for as far as it is yet in possession of the incompetent person, or for as far as it may be proven, that he has actually been benefitted by what has been delivered or paid to him, or that what he has received has been turned over or has served to his advantage.

1469. The rescission on the ground of violence, error or fraud, causes likewise the thing and parties to be re-established in the state, in which they were before the obligation was contracted.

1470. In the cases, provided for by articles 1463 and 1466, the one, against whom the action for rescission has been adjudged, is moreover bound to the compensation of costs, damages and interests, if there be grounds for such.

1471. In all cases, in which an action for rescission of an obligation (including that of which article 1358. treats) is not limited by any special disposition of the law to a shorter period, such action lasts five years.

This time commences to run :

In case of minority, from the day of majority ;

In case of curatorship, from the day of its removal ;

In case of violence, from the day on which it has ceased ;

In case of error or fraud, from the day of the discovery ;

In case of transactions contracted by a married woman, without authority of her husband, from the day of the dissolution of the marriage.

The above mentioned period for the institution of the action is not applicable to the nullity, advanced in the way of defense or exception, which a party is always at liberty to avail himself of.

1472. He, who presumes to be able to claim the rescission of an obligation on several grounds, is bound to advance all those grounds simultaneously, under pain of default of such as may be advanced later, unless the latter, by the fault of the contra-party, could not have been known sooner.

1473. The action for rescission ceases if the minor, the person placed under curatorship, the married woman who has acted without the assistance of her husband, or he who can allege violence, error or fraud, has ratified the obligation expressly or tacitly, subsequent to the day of the majority, the removal of the curatorship, the dissolution of the marriage, the cessation of the violence, or the discovery of the error or fraud.

FIFTH TITLE.

OF PURCHASE AND SALE.

FIRST SECTION.

General dispositions.

1474. Purchase and sale is an agreement by which the one party binds himself to deliver a thing, and the other party to pay the price agreed for it.

1475. It is held to be complete between the parties, as soon as they have agreed on the thing and the price, even though the thing may not yet be delivered, nor the price paid.

1476. The property of the thing sold does not pass any sooner to the purchaser, than after the delivery thereof has been effected, conformable to articles 661, 662 and 665.

1477. If the thing sold consists in a certain and determinate object, it is, from the moment of the purchase, for account of the purchaser, although delivery have not yet taken place; and the seller has a right to demand the price.

1478. If goods are sold not in bulk, but by weight, tale or measure, they remain for account of the seller, until they are weighed, counted or measured.

1479. If on the contrary the goods have been sold in bulk, they are for account of the purchaser, although they have not yet been weighed, counted or measured.

1480. Purchase and sale contracted on trial, or of goods which persons are in the habit of tasting beforehand, is always presumed to have been made under a suspensive condition.

1481. If the purchase is concluded with giving earnest or a gods-penny, none of the parties can depart from that sale, either by allowing the other to keep, or by restoring the earnest or gods-penny.

1482. The price of purchase must be determined by the parties.

It can however be left to the estimate of a third person.

If this third person will not, or cannot make the estimate, there is no purchase.

1483. The costs of the acts of purchase and sale, and other additional expenses, are to the charge of the purchaser, if the contrary be not agreed on.

1484. Between spouses no purchase and sale can take place, except in the three following cases :

1. When one of the spouses transfers goods to the other, from whom he is judicially separated, in payment of what lawfully appertains to this other ;
 2. When the transfer which the husband makes to his wife, even when not separated from her, has any lawful cause, such as the re-investment of her goods alienated, or of means, which belong to her, when namely those goods or means are excluded from the community ;
 3. In case the wife transfers goods to her husband in payment of a sum, which she has promised him in dowry, for as far as those goods are excluded from the community ;
- Saving however, in these three cases, the rights of the heirs of the contracting parties, when one of these latter in that manner may have derived any indirect advantage.

1485. Judges, members of the public ministry, recorders, practitioners, marshals and notaries may not by transfer become proprietors of rights and actions, concerning which there are suits pending before the judge, under whose jurisdiction they exercise their functions, on pain of nullity, and compensation of costs, damages and interests.

1486. Public functionaries may not, on the same pain, either by themselves or by intermediary persons, purchase things, which are sold by them or before them.

1487. In like manner and on the same penalties, may not become purchasers, by themselves or by intermediary persons, in case of private sale :

Mandatories, of things which they were charged to sell ;

Administrators, of things belonging to the realm, the colony, or other public institutions, which are committed to their care and management.

The Governor is however at liberty, to grant dispensation of this prohibition to public administrators.

Guardians can purchase immoveables belonging to their wards, in the manner as regulated in article 452.

1488. Purchase and sale of another's goods is null, and can afford ground against the seller for the compensation of costs, damages and interests, if the purchaser did not know, that the thing belonged to another.

1489. If at the moment of the sale, the thing sold had entirely perished, the sale is null.

If a part only of the thing has perished, it shall be at the option of the purchaser, either to relinquish the purchase, or to demand the part preserved, and to cause the price thereof to be determined by comparative valuation.

SECOND SECTION.

Of the obligations of the seller.

1490. The seller is bound to express clearly to what he binds himself ; all obscure and ambiguous stipulations are construed to his prejudice.

1491. He has two principal obligations, namely to deliver the thing sold, and to warrant it.

1492. Delivery is a transfer of the thing sold, into the power and possession of the purchaser.

1493. The expenses of delivery are at the charge of the seller, and those of removal at the charge of the purchaser, if the contrary be not agreed on.

1494. The delivery must be made at the place where the thing sold was, at the time of the sale, if no other agreement was made in this respect.

1495. The seller is not bound to deliver the thing, if the purchaser does not pay the price, and the seller has not allowed him delay of payment.

1496. In like manner he is not bound to the delivery, although he may have allowed a delay of payment, if the purchaser becomes, subsequent to the purchase, in a state of failure or of notorious insolvency, unless he gave security to pay at the appointed time.

1497. If the delivery fails to be effected by the negligence of the seller, the purchaser can demand the rescission of the sale according to the dispositions of articles 1283 and 1284.

1498. The thing must be delivered in the state in which it is at the moment of the sale.

From that day on all fruits belong to the purchaser.

1499. The obligation to deliver a thing comprises everything that pertains to it, and has been designed for its perpetual use, likewise the titles of ownership, if these exist.

1500. The seller is bound to deliver the thing bought, to its full extent, as it is expressed in the agreement, subject to the following modifications.

1501. If the sale of an immoveable has been made mentioning its extent or contents, at the rate of a certain price for the measure, the seller is bound to deliver the quantity expressed in the agreement; and if this be impossible to him, or if the purchaser does not demand it, the seller is obliged to be satisfied with a proportionate diminution of the price.

1502. If on the contrary, in the case of the preceding article, the immoveable has a greater extent, than is expressed in the agreement, the purchaser has the option, either to augment the price in proportion, or to relinquish the purchase, if namely the excess amounts to one twentieth part over and above the extent expressed in the agreement.

1503. In all other cases, whether a certain determinate object be sold, or whether separate and distinct heritages be the subject-matter of the sale, or whether it commences with a statement of the measure, or with a designation of the thing sold, followed by a statement of the measure, the mention of this measure does not afford ground in favour of the seller, for any augmentation of price for the excess in measure, neither in favour of the purchaser for any diminution of price, for the deficiency in measure, except in as far as the difference between the real measure, and that expressed in the agreement, amounts to one twentieth more or less, calculated on the value of the totality of the objects sold; unless the contrary may be stipulated.

1504. If, according to the preceding article there is ground for the augmentation of the price for the excess of measure, the purchaser has the choice either to relinquish the purchase, or to pay the price augmented, and this with interests in case he has kept the immoveable.

1505. In all cases, in which the purchaser has a right to relinquish the purchase, the seller is bound to restore to him, besides the purchase-money, if he has received it, the expenses attendant on the sale and delivery, for as far as he may have paid them according to agreement.

1506. The action for addition to the price on the part of the seller, and that for diminution of the price or for rescission of the sale, on the part of the purchaser, must be instituted within one year, counting from the day on which the delivery has taken place; and in default thereof these actions shall become extinct.

1507. If two heritages are sold by the same agreement and jointly for one price, with designation of the extent of each, and it be found that the one has more and the other less extent, this difference in the required amount shall be regulated by way of compensation, and the action either for addition or for diminution of the price, does not take place any further than conformably to the rules established above.

1508. The warranty, to which the seller is bound towards the purchaser, has two tendencies, namely : firstly, the quiet and peaceable possession of the thing sold ; secondly, the hidden defects of the thing, or such as give cause for the rescission of the sale.

1509. Although at the time of the sale no stipulation have been made regarding warranty, the seller is ipso jure bound to warrant the purchaser against the eviction, which he may come to sustain, in the whole thing sold, or in part thereof, or against the charges, which a party pretends to have on the thing, and which have not been declared at the time the purchase was contracted.

1510. Parties may, by special agreements, extend or curtail this obligation imposed by the law ; they may even agree that the seller shall not be holden to any warranty whatsoever.

1511. Although it may be stipulated, that the seller shall not be holden to any warranty, he remains nevertheless answerable for that, which results from an act, performed by himself ; all agreements contrary to this are null.

1512. The seller is, in case of the same stipulation, in the event of eviction, bound to restore the price, unless the purchaser, at the time of the purchase, may have known the danger of evictions, or may have purchased the thing at his own advantage or disadvantage.

1513. If warranty has been promised, or nothing has been stipulated on the subject, the purchaser has, in case of eviction, the right to demand from the seller :

1. Restoration of the purchase sum ;
2. Restoration of the fruits, when he is obliged to give them up to the proprietor, who has evicted him ;
3. The expenses incurred by the demand of warranty from the purchaser, likewise those made by the original plaintiff ;
4. Compensation of costs, damages and interests, likewise the judicial expenses attendant on the purchase and delivery, for as far as the purchaser have paid them.

1514. If, at the moment of the eviction, the thing sold is found to be diminished in value, or considerably deteriorated, either through the negligence of the purchaser, or by irresistible force, the seller is nevertheless bound to restore the entire purchase sum.

But if the purchaser has derived profit from the spoliations committed by him, the seller is authorised to deduct from the price a sum equal to such profit.

1515. If the thing sold be found augmented in value at the period of the eviction, even independently of any act of the purchaser, the seller is obliged to pay him what the thing sold is worth, over and above the price of purchase.

1516. The seller is obliged to restore to the purchaser, or to cause to be restored to him by the party evicting, everything advanced by him for repairs and useful improvements to the thing.

If the seller has in bad faith sold the thing of another, he is bound to restore to the purchaser all expenses defrayed, even such as are laid out on the thing, merely for ornament or pleasure.

1517. If the eviction is only from one part of the thing, and that part, in relation to the whole, is so considerable, that the purchaser would not have contracted the purchase, without the part from which he has been evicted, he can cause the purchase to be rescinded, provided he institute the action thereto within one year from the day, on which the sentence of eviction has obtained force of judgment.

1518. When in the case of eviction from a part of the thing sold, the purchase is not rescinded, the purchaser must be indemnified for the part, from which he has been evicted, according to the estimated value, which the thing had at the time of the eviction, but not in proportion to the total price of purchase, whether the thing sold may have augmented or diminished in value.

1519. If the thing sold be found to be burthened with servitudes, without they having been made known to the purchaser, or without he could have known it, and those servitudes are of such great importance, that there is reason to presume, that the purchaser would not have concluded the purchase, if he had been informed thereof, he can demand the rescission of the purchase, unless he rather prefers to be satisfied with an indemnity.

1520. The warranty for cause of eviction ceases, if the purchaser has suffered himself to be condemned by a sentence, which has obtained force of judgment, without summoning the seller, and the latter proves that sufficient grounds existed to cause the demand to be rejected.

1521. The seller is bound to warranty on account of hidden defects in the thing sold, which render it improper for the use to which it is destined, or which so far diminish that use, that if the purchaser had known the defects, he would either not have bought the thing at all, or only for a lesser price.

1522. The seller is not bound to warrant against visible defects, which the purchaser himself could have discovered.

1523. He must warrant against the hidden defects, even though he were not himself aware of them, unless in such case, he had stipulated that he should not be bound to any warranty.

1524. In the cases, mentioned in articles 1521 and 1523, the purchaser has the option, either to return the thing and to demand restitution of the purchase-money, or to keep the thing, and cause such portion of the purchase-money to be restored to him, as the judge shall determine, after having heard experts on the matter.

1525. If the seller was acquainted with the defects of the thing, he is bound, besides to the restoration of the price received for it, also to the compensation of all costs, damages and interests, towards the purchaser.

1526. If the seller was ignorant of the defects of the thing, he is only bound to the restoration of the price, likewise to reimburse to the purchaser the expenses attendant on the sale and delivery, for as far as he may have paid them.

1527. If the thing sold, which had hidden defects, has perished in consequence of them, the loss falls for account of the seller, who shall be bound towards the purchaser to the restoration of the price, and to the other compensations, which are mentioned in the two preceding articles.

But the loss happening by accident, is for account of the purchaser.

1528. The action proceeding from defects, which result in the rescission of the sale, must be instituted by the purchaser within a short period of time, according to the nature of such defects, and with observance of the usages of the place, where the purchase was concluded.

1529. This action does not take place regarding sales made by judicial authority.

THIRD SECTION.

Of the obligations of the purchaser.

1530. The chief obligation of the purchaser consists in paying the price, at the time and place stipulated in the agreement.

1531. If at the time the purchase was made, nothing has been stipulated in this respect, the purchaser must pay at the place where, and at the time when delivery is to take place.

1532. The purchaser is, even without express stipulation, obliged to pay interest on the price of purchase, if the thing sold and delivered produces fruits and other revenues.

1533. If the purchaser is disturbed in his possession by a hypothecary action or by an action of reclamation, or has just reasons to fear, that he will be disturbed therein, he can suspend the payment of the purchase-money, until the seller has caused this disturbance to cease, unless the latter may prefer giving security, or unless it may have been stipulated, that notwithstanding every disturbance, the purchaser, shall be obliged to pay.

1534. If the purchaser does not pay the price, the seller can demand rescission of the sale, conformable to the dispositions of articles 1283 and 1284.

1535. Nevertheless in case of sale of wares and moveables, the rescission of the sale for the benefit of the seller, shall take place ipso jure and without sommation, after the expiration of the time stipulated to take away the thing sold.

CENTRALE BOEKERIJ

Kon. Inst. v. d. Tropen

AMSTERDAM

FOURTH SECTION.

Of the right of re-purchase.

1536. The power to repurchase the thing sold proceeds from a stipulation, by which the seller reserves to himself the right to resume the thing sold, on restitution of the original price, and the compensation alluded to in article 1549.

1537. The right of re-purchase cannot be stipulated for, for a term exceeding five years.

If it has been stipulated for, for a longer period, such term shall be reduced to the aforesaid five years.

1538. The period fixed must be observed to the rigour of the law ; it may not be prolonged by the judge, and when the seller neglects to exercise his action of re-purchase within the term prescribed, the purchaser remains irrevocably proprietor of the thing bought.

1539. This period runs against every one, even against minors, saving their recourse against whom it concerns, if there are grounds for such.

1540. The seller of an immoveable, who has reserved to himself the power to repurchase the thing sold, can exercise his right against a second purchaser, even though in the second agreement such stipulation were not mentioned.

1541. He, who has bought with stipulation of re-purchase, enters into all the rights of his seller ; he can avail himself of prescription, as well against the true proprietor, as against him, who may pretend to have any hypothecary or other rights on the thing sold.

1542. He can make use of the benefit of discussion against the creditors of the seller.

1543. If he, who has bought, with stipulation of re-purchase, an undivided portion of an immoveable, becomes purchaser of the whole, after an action directed against him for partition and division, he can compel the seller to redeem the whole, in case the latter wishes to make use of the said stipulation.

1544. If several persons have sold conjointly and by one and the same agreement, a thing in common between them, each of them can only exercise his right of re-purchase for as far as his share amounted to.

1545. The same takes place also, when one, who has sold a thing alone, leaves several heirs.

Each of these co-heirs can only make use of the power of re-purchase, for as far as his share in the succession amounts to.

1546. But, in the cases of the two preceding articles, the purchaser can demand that all the co-sellers or co-heirs be summoned, in order to come to a mutual understanding regarding the re-purchase of the entire thing ; and if they do not agree, the demand for re-purchase shall be rejected.

1547. If the sale of a thing, belonging to several persons, has not been made by all conjointly and for the whole, but each of them separately has sold that portion, which belonged to him therein, they may each exercise separately the right of re-purchase, in regard of the portion which belonged to him therein ; and the purchaser cannot compel the one, who in this manner makes use of his right, to redeem the whole.

1548. If the purchaser has left several heirs, the right of re-purchase cannot be exercised against each of them, but for as far as regards his share, in the case in which the estate is not yet divided, as well as in the case in which the thing sold is divided among the heirs.

But if the estate is divided, and the thing sold has fallen to the lot of one of the heirs, the action of re-purchase can be instituted against him for the whole.

1549. The seller who makes use of the stipulation of re-purchase, is not only obliged to restore the entire original purchase sum, but also to compensate for all lawful expenses attendant on, and for cause of the sale and delivery, likewise the necessary costs of repairs, and those by which the thing sold has augmented in value, to the amount of this augmentation.

He cannot enter into possession of the thing repurchased, until after having complied with all these obligations.

When the seller, as a result of the stipulation of re-purchase, re-enters into his property, it must pass to him free of all charges and mortgages, with which the purchaser has encumbered it ; he is however obliged to maintain the leases, which the purchaser may have contracted in good faith.

FIFTH SECTION.

Special dispositions regarding the purchase and sale of active debts, and other incorporeal rights.

1550. The sale of an active debt comprises every thing that pertains to it, as suretyships, privileges and mortgages.

1551. He who sells an active debt or other incorporeal right, must guarantee the existence thereof at the time of the delivery, although the sale be made without promise of warranty.

1552. He is not responsible for the sufficient solvency of the debtor, unless he has bound himself thereto, and only to the amount of the price of purchase, which he has received for the active debt.

1553. If he has promised to guarantee the sufficient solvency of the debtor, this promise must be understood of his present solvency, and does not extend to the future, unless the contrary be expressly stipulated.

1554. He who sells an inheritance, without specifying piece for piece, what it consists of, is not further bound than to warrant his quality as heir.

1555. If he may have already enjoyed the fruits of any particular thing, or received the amount of any active debt belonging to that inheritance, or sold any goods from that succession, he is obliged to compensate for them to the purchaser, if the contrary be not expressly stipulated.

1556. The purchaser is on his part obliged to compensate the seller for every thing, which the latter may have paid for the debts and charges of the succession, and to pay what the seller had to claim, as creditor of the succession, unless the contrary may be stipulated.

1557. If before the delivery of an active debt sold, or of any other incorporeal right, the debtor has paid the debt to the seller, he is validly discharged.

SIXTH TITLE.

OF BARTER.

1558. Barter is an agreement, by which parties bind themselves mutually to give each other one thing in lieu of another.

1559. Everything that is capable of being sold, can also constitute the subject-matter of barter.

1560. If the one party has already received the thing, which is given to him in barter, and subsequently proves, that the other party was not the proprietor of the thing, he cannot be compelled to deliver the thing, which he on his part has promised, but only to restore that, which he has received.

1561. He who is evicted from the possession of the thing, which he has received in exchange, has the option to demand from the other party, either compensation of costs, damages and interests, or the restoration of the thing given by him.

1562. If a certain and determinate thing, which one had promised to give in exchange, is lost without the fault of the proprietor, the agreement shall be considered void, and he, who on his part has complied with the agreement, can demand the restoration of the thing given in exchange.

1563. For the rest the rules for the agreement of purchase and sale, apply also to that of barter.

SEVENTH TITLE.

OF HIRING AND LETTING.

FIRST SECTION

General dispositions.

1564. There are two sorts of agreements of hiring and letting: the hiring of goods, and the hiring of services, work and industry.

1565. The hiring of goods is an agreement, by which the one party binds himself to grant to the other party the enjoyment of a thing, during a determinate period of time, and for a determinate price, which the latter accepts to pay.

All kinds of goods, whether immoveable or moveable can be let on lease.

1566. The hiring of services, of work and of industry is an agreement, by which one of the parties binds himself to perform something for the other, in consideration of the payment of a price or salary, agreed upon between them.

SECOND SECTION.

Of the rules common to leases of houses and of lands.

1567. The lessor is bound by the nature of the agreement, and without the necessity of any particular stipulation :

1. To deliver the thing leased to the lessee ;
2. To maintain it in such state, that it can serve for the use, for which it was leased ;
3. To grant the lessee the quiet enjoyment of the thing, as long as the lease continues.

1568. The lessor is bound to deliver the thing leased in all respects in a good state of repairs.

He must cause during the time of the lease, all repairs to be done, to it, which may become necessary, with the exception of those, to which the lessee is bound.

1569. The lessor must warrant the lessee against all defects of the thing leased, which impede the use thereof, although the lessor may not have known them at the time of making the lease.

If from those defects any injury results to the lessee, the lessor is bound to indemnify him on that account.

1570. If, during the time of the lease, the thing let have perished totally by any accident, the lease becomes ipso jure void. If the thing has perished only in part, the lessee has the choice, according to circumstances, to demand either a diminution of the rent, or even the rescission of the lease ; but, in neither of these two cases, can he claim any indemnification.

1571. The lessor may not, during the time of the lease, alter the form or arrangement of the thing leased.

1572. If, during the time of the lease, the thing let requires urgent repairs, which cannot be deferred until after the expiration of the lease, the lessee must permit them, whatever inconvenience they may occasion him, and even though he should be deprived, while these repairs are being done, of a part of the thing leased.

But if these repairs last longer than forty days, the rent shall be reduced in proportion to the time and to the part of the thing leased, of which the lessee shall have been deprived.

If the repairs are of such a nature, that the thing leased becomes thereby untenable in that which is necessary for the lodging of the lessee and his family, he can cause the lease to be rescinded.

1573. The lessor is not bound to guarantee the lessee against impediments, which third persons may cause him, by deeds, in his enjoyment, without otherwise pretending any right on the thing hired, saving the right of the lessee of prosecuting them in his own name.

1574. If on the contrary the lessee has been disturbed in his enjoyment in consequence of an action, concerning the property of the thing, he has a right to demand a proportionate reduction of the rent, provided such disturbance or impediment have been properly brought to the knowledge of the proprietor.

1575. If those, who have committed the deeds, pretend to have any right on the thing leased, or if the lessee himself is cited in law in order to be condemned to vacate the whole or part of the thing, or to permit the exercise of any servitude, he must notify this to the lessor, and he can summon him for warranty.

He can even demand to be put out of the suit, provided he indicates the one, for whom he is in possession.

1576. The lessee may not re-lease the thing, if this power has not been granted to him, neither cede his lease to another, under penalty of the rescission of the lease, and the compensation of costs, damages and interests, without the lessor being obliged, after this rescission, to maintain the under-lease.

If the thing hired be a house or a dwelling, which the lessee himself occupies, he can lease a part thereof to another on his responsibility, if this power has not been denied to him by the agreement.

1577. The lessee is bound to two chief obligations :

1. To use the thing hired, as a good father of a family, and according to the destination, which was given to it in the lease, or according to that, which in default of agreement in that respect, shall be presumable according to circumstances ;
2. To pay the rent on the terms stipulated.

1578. If the lessee employs the thing hired to another use, than that for which it is designed, or to such a use, from which any injury can result to the lessor, the latter can, according to circumstances, cause the lease to be rescinded.

1579. If a description of the thing leased has been made between the lessor and the lessee, the latter is bound to deliver up the thing again in the state, in which he has received it according to that description ; with the exception of what has perished or become deteriorated by age or by inevitable accidents.

1580. If no description has been made, the lessee is presumed, as regards the maintenance which comes to the charge of tenants, to have received the thing hired in a good condition, saving contrary proof, and he must return it in that condition.

1581. The lessee is answerable for all damages, caused to the thing leased, during the period of the lease, unless he proved, that they have happened without his fault.

1582. He is however not responsible for fire, unless the lessor may prove that the fire is occasioned by the fault of the lessee.

1583. The lessee is responsible for all damages or losses caused to the thing hired by members of his household, or by those to whom he may have transferred the lease.

1584. The lessee may, in vacating the thing hired, break off and remove every thing which he has caused to be made at his own expense, provided it be done without injuring the property.

1585. If the lease contracted without writing, is not yet in any way executed, and one of the parties denies the same, no proof by witness can be accepted, however trifling the rent may be, and although the party may claim to have given a gods-penny; only the descissory oath can be demanded from the one, who denies to have contracted the lease.

1586. When a dispute arises regarding the price of a lease, contracted verbally, the execution of which has commenced, and there exists no receipt, the lessor must be believed on his oath, unless the lessee may prefer to have the price of the lease estimated by experts.

1587. If the lease has been contracted in writing, it ceases ipso jure when the fixed time shall have expired, without it being necessary to give a notice to quit.

1588. If the lease has been contracted without writing, it does not cease at the time fixed, but for as far as the one party shall have given notice to quit to the other, with observance of the terms which are established by colonial ordinance or local enactment, or which, in default of such ordinance or enactment, are according to local usage.

1589. When the one party has signified to the other a notice to quit, the lessee although continuing in the enjoyment, cannot pretend a tacit re-hiring.

1590. If after the expiration of a lease contracted in writing, the lessee has remained and is left in possession, a new lease is thereby effected, the consequences of which are regulated in the articles relative to verbal leases.

1591. In the case of the two preceding articles, the suretyship given for the lease, does not extend to the obligations, resulting from the prolongation of the lease.

1592. The contract of hiring is not at all extinguished by the death of the lessor, neither by that of the lessee.

1593. A lease previously contracted is not dissolved by the sale of the thing leased, unless this may have been reserved at the letting.

In case of such reservation the lessee cannot claim indemnity, without an express stipulation; but with this latter stipulation he is not obliged to vacate the thing hired, as long as the compensation due has not been acquitted.

1594. The purchaser with stipulation of re-purchase cannot make use of the power to compel the lessee to vacate the thing hired, before he has irrevocably become proprietor, by the expiration of the term fixed for the re-purchase.

1595. A purchaser who wishes to make use of the power reserved by the contract of hiring, to compel the lessee, in case of sale, to vacate the thing hired, is bound to warn the lessee, at such time in advance, as is regulated by general ordinance or local enactment, respecting notices to quit, or in default of such ordinance or enactment, according to local usage.

Respecting the lease of farms, the warning must precede the ejection at least one year.

1596. The lessor cannot cause the lease to cease by declaring that he himself desires to occupy the thing leased, unless the contrary may have been stipulated.

1597. If in the contract of hiring parties have agreed, that the lessor should have the power to occupy the house or farm leased, himself, he is bound to cause a notice to quit to be signified beforehand, at such time in advance as established in article 1595.

THIRD SECTION.

Of the rules, which relate in particular to the lease of houses and furniture.

1598. The lessee who does not supply a house leased with sufficient furniture, can be compelled to vacate the same, unless he give sufficient security for the payment of the rent.

1599. A second lessee is not further bound towards the proprietor, than to the amount of the price of the second lease, which at the moment of a seizure, he should happen to be indebted for to the first lessee, and without his being able to avail himself of payments made in advance, unless those payments may have been made by virtue of a stipulation, expressed in his lease, or in consequence of local usages.

1600. Trifling and daily repairs are for account of the lessee.

In default of agreement are considered as such, the repairs of shop-cases, the shutting of the windows or blinds, the inner locks, the windows panes inside as well as outside of the house, and everything further, which is included among such repairs by the usage of the place.

Nevertheless those repairs are at the charge of the lessor, if they have become necessary by the decayed condition of the thing leased, or by irresistible force.

1601. The cleaning of wells, cisterns and privies is at the charge of the lessor if the contrary be not stipulated.

The cleaning of chimneys is, in default of stipulation, at the charge of the lessee.

1602. The lease of furniture for the purpose of fitting up with them, an entire house, an entire dwelling, a shop, or any other apartment, is considered to have been contracted for the same length of time, as the houses, dwellings, shops or apartments are ordinarily leased for according to local usage.

1603. The lease of furnished rooms is held to have been contracted by the year, when it is contracted for a certain sum a year ;

By the month, when it is contracted at a certain sum a month ;

By the day, when it is contracted at a certain sum for every day.

If it does not appear, that the lease has been contracted for a certain sum by the year, by the month or for every day, it shall be deemed to have been made according to local usage.

1604. If the lessee of a house or apartment continues in possession of the thing hired, after the expiration of the time of the lease, stipulated by written agreement, without opposition on the part of the lessor, he shall be considered to continue to occupy the thing on the same conditions, for the term regulated by colonial ordinance or local enactment, or in default thereof, by local usage, and he shall not be at liberty to quit, nor liable to be ejected therefrom, until after a notice in due time, made according to the ordinance, the enactment or the local usage.

FOURTH SECTION.

Of the rules, which relate in particular to farming leases.

1605. If in a farming lease an extent is given, smaller or larger than that which the lands really have, it shall not give cause for augmentation or diminution of the rent, except in the cases and according to the rules established in the fifth title of this book.

1606. If the lessee of lands does not stock the farm with cattle and implements of husbandry necessary for the pasturage and cultivation ; if he discontinues the pasturing or cultivation, or does not act in this respect as a good father of a family ; if he employs the thing hired to another use than that for which it is designed ; or if he, in general, does not comply with the stipulations made in the lease, and any damage thereby result to the lessor, the latter is authorized, according to circumstances, to demand the rescission of the lease, with compensation of costs, damages and interests.

1607. All lessees of farms are bound to secure the fruits in the barns designed for this purpose.

1608. The lessee of farms is bound, under penalty of the compensation of costs, damages and interests, to inform the proprietor of all usurpations, which may be committed on the heritages hired.

This information must be given within the same interval, which is appointed between the day of the citations and the day of the appearance, according to the distance of the places.

1609. Farming leases, made without writing, are considered to have been contracted for one year.

1610. If, after the expiration of a lease contracted by writing, the lessee remains in possession of the land, and is suffered to remain therein, the effects of the new lease are regulated by the former agreement.

1611. The lessee whose lease expires, and he who succeeds him in the lease, are bound to aid each other reciprocally with every thing which is required to facilitate the quitting and the occupation of the land, in what regard the cultivation for the ensuing year, the gathering of the fruits still standing in the fields, and otherwise; all this conformable to local usage.

1612. The lessee must likewise, on quitting, leave the straw and the manure of the past year, if he has received them at the commencement of his lease; and even though he had not received them, the proprietor may retain them, according to an estimate to be made.

FIFTH SECTION.

Of the hiring of domestics and workmen.

1613. One can only engage his services for a time, or for a determinate undertaking.

1614. The master is believed on his word, if required confirmed by oath :

As regards the amount of wages stipulated ;

As regards the payment of the wages for the year elapsed ;

As regards what is paid on account of the wages for the current year ; and

As regards the duration of time, for which the hiring was contracted.

1615. Domestics and workmen may not, if they are hired for a fixed time, leave their employ without lawful reasons, neither may they be discharged therefrom ere the time shall have expired.

If they leave their employ, without lawful reasons, within the fixed or ordinary period of hiring, they shall forfeit the wages earned.

The master is however authorized to discharge them at all times, without giving any reasons, but in such case he is bound to pay them, besides the wages due, six weeks as a compensation, counting from the day on which they have been discharged from service.

If the hiring is contracted for a shorter period than six weeks, or has to run less than six weeks, they have in such case a right to the full wages.

SIXTH SECTION.

Of the undertaking of work.

1616. In charging any one to do a work, one can agree that the workman shall furnish only his labour or his industry, or otherwise that he shall furnish also the material.

1617. In case the workman must furnish the material, and the work perishes in whatsoever manner, before it is delivered, the loss shall be for his account, unless he, who has ordered the work, have been negligent to receive it.

1618. If the workman must furnish only his labour or his industry, and the work perishes, he shall only be answerable for his fault.

1619. If in the case mentioned in the preceding article, the work gets lost, without any neglect of duty on the part of the workman, before the delivery has taken place, and without he, who has ordered the work, having been negligent in verifying and approving of it, the workman has no claim for his salary, unless the thing were lost by a defect in the material itself.

1620. If a work is done by the piece or by the measure, it can be verified in parts; this verification is considered to have been made of all the parts paid for, when the one who has ordered the work pays the workman every time in proportion to what is finished.

1621. If a building, contracted and finished for a fixed price, perishes entirely or partly by a defect in the construction, or even on account of the unsuitableness of the ground, the architects and contractors are responsible therefore during ten years.

1622. If an architect or contractor has undertaken to construct a building by contract, according to a plan contrived and settled with the proprietor of the ground, he cannot demand any augmentation of the price, either under pretence of the augmentation of the price of labour, or of the materials, or under that of alterations or additions, which are not included in the plan, if those alterations or enlargements have not been sanctioned in writing, and no agreement has been made with the proprietor about their price.

1623. The master can, if he thinks proper, rescind the undertaking, although the work be already begun, provided he indemnify the contractor fully for all his expenses made, labour and loss of gain.

1624. The hiring for work ceases by the death of the workman, architect or contractor.

But the proprietor is bound to pay the heirs, in proportion to the price stipulated in the agreement, the value of the work done, and that of the materials prepared, provided that work or those materials can be of any service to him.

1625. The contractor is responsible for the acts of those, whom he puts to the work.

1626. Masons, carpenters, smiths and other mechanics, who have been employed to construct a building, or to do any other work by undertaking, have no action against the person, for whom such works have been done, except to the amount which he owes to the undertaker, at the moment that they institute their action.

1627. Masons, carpenters, smiths and other mechanics, who undertake a work, directly and for a fixed price, are bound by the rules, prescribed in this section.

They are contractors in the trade, in which they work.

1628. Workmen, who have any thing of another under them, in order to do any work to it, are entitled to keep such thing under them until the full payment of the expenses and prices of the workmanship expended thereon, unless the proprietor have given sufficient security for those expenses and prices of workmanship.

1629. The rights and obligations of carriers and masters of vessels are established in the Commercial Code.

EIGHT TITLE.

OF ASSOCIATION OR PARTNERSHIP.

FIRST SECTION.

General dispositions.

1630. Association is an agreement, by which two or more persons bind themselves to put something in common, with a view to share the benefit resulting therefrom.

1631. Every association must have a lawful object, and be contracted for the common interest of the parties.

Each of the partner must bring into the association either money, or other goods, or his industry.

1632. Associations are either general or particular.

1633. The law knows only of the general associations of profit. It prohibits all associations, either of all the goods, or of a determinate portion of the same under a general title; without prejudice to the dispositions, established in the sixth and seventh title of the first book.

1634. The general association of profit includes only that, which parties, during the course of the association, shall acquire, under whatsoever denomination, by their industry.

1635. A particular association is such a one, which has only relation to certain determinate things, or to their use, or to the fruits, which shall be drawn therefrom, or to a particular enterprise, or to the exercise of any profession or trade.

SECOND SECTION.

Of the obligations of the partners amongst themselves.

1636. The association commences from the moment of the agreement, if no other period is appointed therein.

1637. Each partner owes to the association everything which he promised to contribute thereto, and if this contribution consists of a determinate object, he is bound to warranty in the same manner as takes place in regard of purchase and sale.

1638. The partner, who had to contribute a sum of money to the association, and has not done it, becomes ipso jure, and without demand being made to him, debtor for the interests of this sum, counting from the day on which it should have been contributed.

It is the same with regard to sums of money, which he has taken from the common cash, counting from the day on which he has drawn them therefrom, for his private benefit.

All this without prejudice to the compensation of further costs, damages and interests, if there be ground for such.

1639. The partners, who have bound themselves to contribute their labour and industry to the association, are accountable to it for all profits, which they have acquired by such kind of industry, as forms the object of the association.

1640. When one of the partners has for his own account, a claim for a sum due, against a person, who is also indebted to the association in a sum equally due, the payment which he receives must be placed to the credit of the claim of the association, and to that of himself in the proportion of these two claims, although it may be, that, in the acquittance, he has placed the whole on account or in payment of his own claim; but if he has expressed in the acquittance, that the whole payment shall be towards the claim of the association, this determination shall be observed.

1641. If one of the partners has received his entire share of an active debt in common of the association, and the debtor has subsequently become insolvent, such partner is bound to contribute what he has received, to the common cash, although he had given acquittance for his share.

1642. Every partner is bound towards the association for the compensation of the damages, which he caused to it by his fault, without being at liberty to bring in compensation for those damages, the profits, which he may have procured to the association in other affairs by his labour and industry.

1643. If the things, of which only the enjoyment has been brought in the association, consist of certain and determinate objects, which do not perish by use, they are for account of the partner, to whom they belong in property.

If those things perish by use, if they decrease in value by keeping them, if they have been designed to be sold, or if they have been brought in the association, at a valuation, determined in an inventory, they are for account of the association.

If the thing has been appraised, the partner cannot demand any more than the amount of the appraisement.

1644. A partner has an action against the association, not only on account of moneys, which he has disbursed for it, but also by reason of the obligations which he has contracted in good faith in behalf of the association, and on account of the damages, which are inseparable from his management.

1645. If the share of each partner in the profits and losses, is not specified in the act of association, the share of each is in proportion to what he has contributed towards the association.

In respect of him, who has only contributed his industry, the share in the profits and losses shall be calculated to be equal with the share of the one of the partners, who has contributed the least.

1646. The partners cannot stipulate that they shall refer the regulation of the estimate of their share to one of them, or to a third party.

Such a stipulation shall be considered not written, and in such case the ordinances of the preceding article shall be observed.

1647. A stipulation, by which all the benefits may be promised to one of the partners, is null.

But it is permissive to stipulate, that all the losses shall be borne exclusively by one or more of the partners.

1648. The partner, who by a special clause of the contract of association, is charged with the management, can, notwithstanding the opposition of the other partners, perform all acts, relative to his management, provided he act in this bona fide.

This power cannot be recalled without lawful cause, as long as the association continues ; but if it has not been given in the contract of association, but in a subsequent act, it is revocable, the same as a simple mandate.

1649. If several partners are charged with the management, without their particular functions being determined, or without a stipulation that one could not act without the other, each of them is qualified separately to perform all acts, regarding such management.

1650. If it has been stipulated that one of the managers should do nothing without the other, the one may not act, without a new agreement, apart from the co-operation of the other, although the latter may even be for the moment in the impossibility of concurring in the acts of management.

1651. In default of special stipulations regarding the manner of management, the following rules must be observed :

1. The partners are considered to have granted each other reciprocally the power of managing the one for the other ;
What each of them does, is also binding for the share of the other partners, without his having obtained their consent ; saving the right of these latter or of one of them, of opposing the act, as long as it is not concluded ;

2. Each of the partners may make use of the things belonging to the association, provided he employs them to such purposes, as whereto they are commonly intended, and provided he does not make use of them contrary to the interest of the association, or in such manner that the other partners are thereby prevented to make also use of those things, according to their right ;

3. Each partner has a right to compel the other partners to contribute towards the expenses, necessary for the preservation of the things belonging to the association ;

4. None of the partners can, without the consent of the others, make any innovations regarding immoveables, belonging to the association, even though he may pretend that they were advantageous to the association.

1652. The partners, who have not the management, may not alienate, pledge nor encumber even the moveables belonging to the association.

1653. Each of the partners may, even without the consent of the others, accept a third person as co-partner in the share, which he has in the association; but he cannot, without such consent admit him as member of the association, even though he should be charged with the management of the affairs of the association.

THIRD SECTION.

Of the obligations of the partners with regard to third parties.

1654. The partners are not bound jointly and severally for the debts of the association, and one of the partners cannot bind the others if the latter have not bestowed on him that power.

1655. The partners can be attacked by the creditor, with whom they have contracted, each for an equal sum and equal share, although the share of one of them in the association amounted to less than that of the other; unless at the time of contracting the debt, their obligation to bear in proportion of the share of each partner in the association, be expressly determined.

1656. A stipulation, that an act is contracted for account of the association, binds only the partner who has contracted it, but not the others, unless the latter have given him power thereto, or unless the thing have served to the benefit of the association.

1657. If one of the partners has made an agreement in the name of the association, the association can demand the execution thereof.

FOURTH SECTION.

Of the different manners, in which association ends.

1658. Association ends :

1. By the expiration of the time, for which it is contracted ;
2. By the destruction of the thing or the accomplishment of the act, which constitutes the object of the association ;
3. By the simple will of some or only one of the partners ;
4. By the death or the curatorship of one of them, or if he is declared in a state of failure or of notorious insolvency.

1659. The dissolution of associations, contracted for a determinate period, cannot be demanded by one of the partners, before the expiration of that period, except for lawful reasons, as per example, if another partner does not comply with his obligations, or a continued indisposition render him incapable of attending to the affairs of the association, or other similar cases, the legality and importance of which are left to the discrimination of the judge.

1660. If one of the partners has promised that he shall contribute the property in any thing to the association, and this thing perishes, before the contribution has been effected, the association is thereby dissolved with reference to all the partners.

The association is likewise dissolved in all cases, by the perishing of the thing, when only the enjoyment thereof has been put in common, and the property has continued with the partner.

But the association is not broken by the perishing of the thing, when the property is already brought into the association.

1661. An association can only be dissolved by the will of some, or of only one of the partners, if it has been contracted for no determinate period.

The dissolution is effected, by a renunciation notified to all the other partners, provided this renunciation be made in good faith and not unseasonably.

1662. The renunciation shall be considered not to have been made in good faith, when one partner renounces the association with the view to appropriate to himself alone a benefit, which the partners had contemplated to enjoy in common.

The renunciation is made unseasonably when the things are no longer in their entirety, and the interest of the association demands, that its dissolution should be deferred.

1663. If it has been stipulated, that in case of the death of one of the partners, the association should continue with his heir, or only among the remaining partners, such stipulation must be observed.

In the second case the heir of the defunct has no further right, than to the division of the association, according to the state in which it was at the time of that death; but he shares in the profits and bears in the losses, which are the necessary consequences of transactions, which have taken place before the death of the partner, whose heir he is.

1664. The rules respecting the partition of successions, the form of this partition, and the obligations which result therefrom among the co-heirs, are also applicable to the division between partners.

NINTH TITLE.

OF CORPORATIONS.

1665. Besides the association proper, the law acknowledges also societies of persons as corporations, whether they are instituted as such by public authority, or whether they are acknowledged as bodies corporate.

1666. A society, which is not instituted by public authority, must, in order to be able to appear as person in law, be acknowledged as a corporation by resolution of the Governor.

1667. The acknowledgment, alluded to in the preceding article, takes place by the sanction of the statutes or regulations of the society.

Those statutes or regulations shall contain the object, the foundations, the sphere of action and the further rules of the society.

Modification or alteration of the statutes sanctioned, require further sanction.

The statutes, modifications or alterations sanctioned, shall be published in one of the newspapers issued in the colony.

1668. The acknowledgment is only refused by the Governor, on motives derived from general interest.

The resolution of refusal is to be motivated with reasons.

1669. All corporations, existing as persons in law, are the same as private persons, authorized to contract civil transactions, saving the public ordinances by which such authority may be modified, limited or subjected to certain formalities.

1670. The directors of such corporation are, for as far as the statutes and regulations do not contain any contrary provision in this respect, entitled to act in name of the corporation, to bind it towards third parties and third parties towards it, likewise to appear in law, as plaintiff as well as defendant.

1671. All transactions, to which the directors were unqualified, bind the corporation only in as far as it has actually been benefitted thereby, or the transactions have been subsequently properly ratified.

1672. If the statutes and regulations do not contain any provision regarding the direction of the corporation, none of the members is authorised to act in its name, or to bind the corporation in any other way except as prescribed in the conclusion of the preceding article.

1673. For as far as the statutes and regulations do not contain any other provision in this respect, the directors are obliged to render account and justification to the joint members of the corporation, and each member is authorized to summon him in law for this purpose.

1674. If no provisions are made in the statutes and regulations regarding the right of vote, every member of a corporation has an equal right to give his vote, and the resolution shall be made by majority of votes.

1675. The rights and obligations of the members of such corporation, are regulated according to the ordinances, upon which they are instituted by public authority, or according to its own statutes and regulations, and for as far as these are wanting, by the dispositions of this title.

1676. The members of a corporation are not individually responsible for its obligations.

The debts can only be recovered on the goods of that corporation.

1677. A corporation instituted by public authority is not extinguished by the death or the renunciation of the membership of all the members, but continues to exist as such, until it is legally dissolved.

If all the members are lacking in the manner as above, the canton-judge under whose jurisdiction the corporation is established, is authorised, at the request of the party interested, and after the hearing and even on the requisition of the public ministry to prescribe the measures, which may be required meanwhile in the interest of the corporation.

1678. All other corporations continue to exist, until they are expressly dissolved, according to their statutes or regulations, or until the purpose or object of the society ceases.

1679. If the ordinances of the corporation or its statutes and regulations, do not contain in this respect any other provisions, the right of the members is individual, and is not transmitted to their heirs

1680. At the dissolution of such corporation, the remaining members, or otherwise the only remaining member, are bound to pay the debts of the corporation to the amount of the assests, and they can only divide the nett surplus among themselves, or appropriate it to themselves, and accordingly transmit it to their heirs.

With regard to the calling of creditors, the liquidation of the account and justification, and the payment of debts, they are subjected to the same obligations as heirs, who have accepted an inheritance under benefit of inventory.

In default of compliance with those obligations, they are individually, each for the whole, answerable for the debts and this charge is transmitted to their heirs.

1681. Deviation from the statutes, upon which a society has been acknowledged as corporation, gives to the public ministry the authority to demand before the civil judge the deprivation of the society of its quality of person in law.

The judge, in pronouncing the deprivation, can by provision deny to the society the authority to perform civil transactions.

The liquidation of the affairs of a society, deprived of its personality in law, is effected under the control of the judge, who pronounced the deprivation, in the manner and with observance of the forms prescribed with reference to vacant succession.

1682. After the moveables and immoveables of the society are sold by the curator and the debts paid, the nett surplus, if there be any, shall be paid out to those, who at the moment of the deprivation, are members of the society, or to their assigns, each for the share which they had in the society.

1683. Societies not instituted or acknowledged as persons in law cannot as such, contract civil transactions.

The agreements made in their behalf, and the goods acquired in their behalf, are considered with respect towards the Government, the colony, and third parties, as following the individuals, who have concluded the agreements and acquired the goods, even though in the agreements and titles, the persons acting are only designated as mandatories or directors of the societies.

1684. The mutual relation of the members of societies, who cannot appear as persons in law, is regulated according to the bye-laws established by them, and the general rules of the civil law.

The dispositions of articles 1678 and 1679 remain applicable to these societies, although not considered as persons in law.

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TENTH TITLE.

OF DONATIONS.

FIRST SECTION

General dispositions.

1685. Donation is an agreement, by which the donor, during his life, cedes any thing gratuitously and irrevocably in favour of the donee, who accepts it.

The law acknowledges no other donations, than donations inter vivos.

1686. Donation shall only comprise the present goods of the donor.

If it comprises future goods, it shall in that respect be null.

1687. The donor may not reserve to himself the authority of disposing of an object, included in the donation; such a donation shall be considered null, for as far as regards that object.

1688. It is permissive to the donor to make reservation for his own benefit of the enjoyment or usufruct of moveable or immoveable goods bestowed, or to dispose thereof for the benefit of another; in which cases the dispositions of the ninth title of the second book shall be observed.

1689. A donation is null, if it has been made under condition of discharging other debts or charges, than those which stand expressed in the act of donation itself, or in a statement, which ought to be annexed to it.

1690. The donor may reserve to himself the liberty of disposing of a determinate sum of money from the goods bestowed.

If he dies without having disposed of that sum of money, the thing bestowed remains in its entirety to the donee.

1691. The donor is at liberty to reserve to himself the right of a return of the goods bestowed, either in case the donee alone, or the donee and his descendants happen to die before the donor, but this cannot be stipulated for, except for the benefit of the donor alone.

1692. The effect of the right of return shall consist therein, that all alienation of the goods bestowed are rescinded, and that those goods return to the donor free and quit of all charges and mortgages, which may be imposed thereon, since the period of the donation.

1693. The donor is in case of eviction, not bound to any warranty.

1694. The dispositions of articles 906, 907, 908, 909 and 911, those of article 921, and finally the seventh and eighth section of the twelfth title of the second book, are applicable to donations.

SECOND SECTION.

Of the capacity of disposing and of receiving benefit by way of donation.

1695. All persons may dispose or receive by way of donation, excepting such as are declared by the law incapable thereto.

1696. Minors may not dispose by way of donation, saving that which is established in the seventh title of the first book.

1697. Donations between spouses, made during marriage, are prohibited.

This disposition is however not applicable to gifts or presents of moveable, corporeal things, the value of which is not exorbitant, in consideration of the fortune of the donor.

1698. In order to be capable of receiving benefit from a donation, the donee must be in existence at the time when the donation is made, with observance of the rule established in article 3.

1699. Donations made to public or religious institutions have no effect, except for as far as the Governor shall have granted to the directors of those institutions, the power to accept such donations.

1700. The dispositions of the second and of the last part of article 931, likewise articles 933, 934, 935, 936, and 937 are applicable to donations.

THIRD SECTION.

Of the form of donations.

1701. No donation, except that which is treated of in article 1706, can under penalty of nullity be made otherwise than by a notarial act, the original of which has remained with the notary.

1702. No donation is binding upon the donor, or produces any effect whatsoever, but from the day on which it shall have been accepted in express terms, either by the donee himself, or by a person to whom mandate is given by the donee in an authentic act, to accept donations, which are made to him, or may be made in the future.

If the acceptance is not made in the act of donation itself, it shall be permitted to be done by a later authentic act, of which an original shall be kept, provided this take place during the lifetime of the donor; in which case the donation, in respect of this latter, shall only have effect from the day on which the acceptance shall have been signified to him.

1703. Donations made to a married woman, cannot be accepted otherwise than conformably to the dispositions of the fifth title of the first book.

1704. A donation made to minors, can be accepted by the father, during the lifetime of both parents.

A donation made to minors, standing under guardianship, or to persons placed under curatorship, is to be accepted by the guardian or the curator, authorized thereto by the high court of justice.

If the high court grants the authorisation, the donation remains in force, although the donor have died before the authorisation was granted.

1705. The property of the goods comprised in the donation, even when such donation has been properly accepted, is not acquired by the donee, except by means of the transfer, made in conformity with articles 661, 662 and 665.

1706. The gifts from hand to hand of moveable, corporeal objects, or of active debts to bearer, require no act, and are valid by the single surrender to the donee, or to a third party, who accepts the gift for him.

FOURTH SECTION.

Of the revocation and rescission of donations.

1707. A donation cannot be revoked, nor rescinded in consequence thereof, except in the following cases :

1. For cause of non fulfilment of the conditions, subject to which it has been made ;
2. If the donee has rendered himself guilty of, or accomplice to an attempt at the life of the donor, or of an other offense towards him ;
3. If he refuses to furnish subsistence to the donor, after the latter is reduced to poverty.

1708. In the first case the thing bestowed remains to the donor, or he can revendicate it free of all charges and mortgages, which the donee may have imposed on it, with the fruits and revenues enjoyed by the donee, since his neglect.

The donor can, in such case, exercise against the third possessor of an immoveable given by donation, the same rights, as against the donee himself.

1709. In the two last cases, expressed in article 1707, no interruption shall be caused to the alienation of the thing bestowed, or to the mortgages or other real charges, which the donee may have imposed thereon, before the demand for rescission of the donation, has been inscribed, next to the transcription mentioned in article 665. All alienations, mortgages, or other real charges, which may have been made subsequent to the aforesaid inscription, are null, if the demand in consequence of the revocation be granted.

1710. The donee must, in the case of the preceding article, return the thing bestowed with the fruits and revenues, counting from the day of the action, or in case the thing may have been alienated, the value thereof, at the time of the action, likewise with the fruits and revenues, since that time.

He is moreover bound to indemnify the donor for the mortgages and other charges, wherewith immoveables may have been encumbered by him, even before the action.

1711. The action expressed in the preceding article lapses after the expiration of one year, counting from the day, on which the fact, which affords ground to it, has happened, and could have been known to the donor.

This action cannot be instituted by the donor against the heirs of the donee, neither by the heirs of the donor against the donee, unless in this latter case, the action had already been instituted by the donor or he had died within the year after the fact, which is alleged.

1712. By the dispositions of this title, no prejudice is made to the rules established in the seventh title of the first book.

ELEVENTH TITLE.

OF DEPOSIT.

FIFTH SECTION.

Of deposit in general, and of its different sorts.

1713. There is deposit, when one accepts the thing of another, on condition of keeping it, and returning it in kind.

1714. There are two sorts of deposit, the deposit properly so called, and the sequestration.

SECOND SECTION.

Of deposit, properly so called.

1715. Deposit, properly so called, is considered to have been contracted gratuitously, if the contrary has not been stipulated.

It can only have for its object things moveable.

1716. This agreement is not perfected, except by the real or supposed surrender of the thing.

1717. Deposit takes place either voluntarily, or necessarily.

1718. Voluntary deposit takes place in consequence of the mutual consent of the depositor and the depositary.

1719. If a party without proof in writing, or without a commencement of proof in writing, may allege a voluntary deposit, the existence of which is not susceptible of proof by witnesses, the person who is attacked as depositary, is believed either regarding the fact itself of the deposit, or regarding the thing which constitutes the subject-matter of the deposit, or regarding the restitution thereof; all this without prejudice to the provisions, contained in the fourth book, with reference to the decisory oath.

1720. Voluntary deposit can only take place between persons capable of contracting obligations.

If however a person, capable of contracting obligations, accepts something in deposit from a person incapable thereto, he is subject to all the obligations of a real depositary.

1721. If the deposit has been made by a person capable, to one incapable of contracting obligations, the depositor has only an action for the restitution of the thing deposited, against the depositary, as long as the latter is still in the possession of the thing, or if the thing is no longer with the depositary, an action for compensation, for as far as he has been benefitted thereby.

1722. Deposit from necessity is that, which one is compelled to do through some accident, such as fire, falling in of buildings, pillage, shipwreck, inundation, or other unforeseen events.

1723. Proof by witnesses is permitted respecting deposit from

necessity, even though the value of the thing given in deposit may exceed the amount, which according to the rule, is not susceptible of proof by witnesses.

1724. For the rest the deposit from necessity is regulated according to the dispositions, which apply to voluntary deposit.

1725. The depositary must employ in the custody of the thing confided to him, the same care which he employs in the keeping of his own things.

1726. The disposition of the preceding article must be applied with more rigour :

1. If the depositary has offered himself to receive the deposit ;
2. If he has stipulated any salary for the deposit ;
3. If the deposit is effected solely in the interest of the depositary ;
4. If it has been expressly stipulated, that the depositary should be answerable for all sorts of neglect.

1727. In no case is the depositary answerable for inevitable accidents, unless he may have been in delay in the restoration of the thing deposited.

Even in this latter case he is not answerable, if the thing would have equally perished with the depositor.

1728. Keepers of inns and hotels are responsible as depositaries for the effects, brought by travellers, who take lodgings with them. The deposit of effects of this description shall be considered as a deposit from necessity.

1729. They are responsible for the stealing or damaging of the goods of the traveller, whether the theft be committed or the damage caused by the domestics or other servants of the inn, or by any other person.

1730. They are not responsible for robberies with violence, or those which are committed by persons, whom the traveller has himself admitted to him.

1731. The depositary may not make use of the thing given in deposit, without the express or implied permission of the depositor, under penalty of the compensation of costs, damages and interests, if there be ground.

1732. He may not investigate what the things consist of, which have been given to him in deposit, if they have been entrusted to him in a closed box, or under a sealed cover.

1733. The depositary must return the identical thing, which he has received.

Thus sums of money must be returned in the same pieces of money, which have been given in deposit, whether those coins have augmented or diminished in value.

1734. The depositary is only bound to return the thing deposited in the state, in which it is found at the moment of the restitution.

The deteriorations which it has suffered, without his fault, are for account of the depositor.

1735. The depositary, from whom the thing has been taken away by irresistible force, and who has received its value or something else in its stead, must return what he has received to the depositor.

1736. The heir of the depositary, who, not knowing that a thing was received in deposit, has sold it bona fide, is only bound to restore the purchase-money received by him, or if he has not yet received it, to cede his action against the purchaser.

1737. If the thing given in deposit has produced fruits, which have been collected or received by the depositary, he is obliged to restore them.

He is not indebted in interests of sums of money entrusted to him, except from the day that he, being warned thereto, has remained in delay of restitution.

1738. The depositary may not return the thing deposited, except to the person, who has entrusted it to him, or to him, in whose name the deposit has been made, or who is designated to receive it back.

1739. He cannot demand proof from the person, who has given the thing in deposit, that he was the proprietor of it.

Nevertheless if he discovers that the thing has been stolen, and who is the veritable proprietor of it, he must inform the latter, that the thing has been put in deposit with him, with notice to claim it within a determinate and sufficient interval. If the party, to whom the notice has been made, neglects to reclaim the thing put in deposit, the depositary is validly discharged by the surrender of the thing to the person, from whom he has received it.

1740. In case of the death of the depositor, the thing can only be returned to his heir.

If there are more heirs it must be returned to all of them jointly, or to each of them for his share.

If the thing put in deposit is indivisible, the heirs must come to an understanding among themselves, respecting the receiving of it.

1741. If the person, who has given the thing in deposit, has changed his state, for instance: if a woman unmarried at the time of the deposit, is married subsequently, and accordingly finds herself under the power of her husband; if a depositor of age is placed under curatorship; in all these and similar cases the thing given in deposit may not be returned, but to the persons, who has the administration of the rights and goods of the depositor, unless the depositary may have legal grounds not to know the change of state.

1742. If the deposit has been made by a guardian, curator, husband, or administrator and their administration has ceased, the thing can only be returned to the person, who was represented by the guardian, curator, husband or administrator.

1743. The restitution of the thing given in deposit must be made at the place, pointed out by the agreement.

If the agreement does not point out the place for the restitution, it must be made at the very place, where the deposit was effected.

The expenses, attending this, are for account of the depositor.

1744. The thing deposited must be returned to the depositor, as soon as he demands it, even though a fixed time for the restitution may have been established in the agreement, unless an arrest have been laid in hands of the depositary.

1745. The depositary who may have lawful reasons, to relieve himself of the thing given in deposit, can also return it to the depositor, before the time fixed in the agreement, or in case of his refusal, obtain permission from the judge to put it in deposit at another place.

1746. All obligations of the depositary cease, if he happens to discover and prove, that he is himself proprietor of the thing deposited.

1747. The depositor is obliged to reimburse to the depositary all expenses, which he may have made for the preservation of the thing deposited, and to indemnify him for all damages, which the deposit may have occasioned him.

1748. The depositary is entitled to keep the thing under him until full payment of what is due to him, by reason of the deposit.

THIRD SECTION.

Of sequestration, and of its different sorts.

1749. Sequestration is the deposit of a thing in dispute, in the hands of a third person, who binds himself to return it with its fruits, after the dispute shall be decided, to the one, who shall be declared entitled to it.

This deposit takes place, either by agreement, or upon judicial command.

1750. Sequestration takes place by agreement, when the thing in dispute is placed voluntarily by one or more persons in hands of a third party.

1751. It is no essential requirement, that sequestration should take place gratuitously.

1752. Sequestration is subjected to the same rules as the deposit properly so called, saving the following exceptions.

1753. It can have for its object moveable and immoveable things.

1754. The depositary, who is charged with the sequestration, cannot be released from the keeping of the thing, before the dispute is decided, unless all the parties interested may consent to it, or there may exist another lawful cause.

1755. Sequestration upon judicial command takes place, when the judge orders that a thing in dispute, be put in deposit.

1756. Judicial sequestration is charged, either to a person, regarding whom parties interested have mutually agreed, or to a person, appointed thereto ex-officio by the judge.

In both cases the person, to whom the thing is entrusted, is subject to all the obligations, which sequestration by agreement imports, and furthermore bound to render annually to the high court of justice, on demand of the public ministry, a summary account of his administration, with exhibition or indication of the things entrusted to him, without however the approval of the account be permitted to be objected to the parties interested.

1757. The judge may command sequestration :

1. Of moveable things, which are seized under a debtor ;
2. Of a moveable or immoveable thing, the property or possession of which is in dispute between two or more persons ;
3. Of things, which a debtor offers for the acquittance of his debt.

1758. The appointment of a judicial depositary produces between the party who makes the seizure and the depositary, reciprocal obligations.

The depositary must employ in the preservation of the things seized the care of a good father of a family.

He must surrender them, either to be sold in order to pay therefrom the party seizing, or to the party, against whom the seizure has been made, if this seizure is removed.

The obligation of the party seizing consists of paying the salary for depositaries, established by resolution of the Governor.

TWELFTH TITLE.

OF LOAN FOR USE. (COMMODATE)

FIRST SECTION.

General dispositions.

1759. Loan for use is an agreement, by which the one party gives to the other a thing in use gratuitously, on condition that he, who receives this thing, shall return it, after having made use of it, or after a specified time.

1760. The lender remains proprietor of the thing lent.

1761. Every thing belonging to the commerce of men, and which does not perish by use, can be the subject-matter of this agreement.

1762. The obligations, which proceed from loan for use, are transmitted to the heirs of the one who lends, and of him, who borrows.

But if one has granted a loan only from consideration of the person, who borrows, and to his person in particular, his heirs cannot continue the further enjoyment of the thing lent.

SECOND SECTION.

Of the obligations of the person, who receives something in loan for use.

1763. The borrower is bound to care as a good father of a family for the keeping and preservation of the thing lent.

He may not make any other use of it, than such as the nature of the thing imports, or is stipulated in the agreement; all under penalty of the compensation of costs, damages and interests, if there be ground.

If he makes use of the thing lent for another purpose, or during a longer time, than he ought to have done, he shall be moreover answerable for the loss of the thing, even when such loss happened by a mere accident.

1764. If the thing lent perishes by an accident, which the borrower could have avoided by using his own thing, or if he, being able to preserve only one of the two, has given a preference to his own, he is answerable for the loss of the other thing.

1765. If the thing is appraised on giving it in loan, the loss thereof shall be, even when happening by accident, for account of the borrower, unless the contrary may have been stipulated.

1766. If the thing diminishes in value only as a result of the use, for which it was borrowed, and without the fault of the borrower, he is not responsible for such deterioration.

1767. If the borrower, in order to be able to make use of the thing lent, has made any expenses, he cannot reclaim them.

1768. If several persons have conjointly received the same thing in loan, they are jointly and severally answerable therefor towards the lender.

THIRD SECTION.

Of the obligations of the lender.

1769. The lender cannot reclaim the thing lent, until after expiration of the time fixed, or in default of such a stipulation, until after it shall have served or could have served for the use, for which it was lent.

1770. If however the lender, during that interval, or before the necessity of the borrower has ceased, requires himself the thing lent, for urgent and unforeseen reasons, the judge can, according to circumstances, compel the borrower to return the thing to the lender.

1771. If the borrower, during the loan for use, has been obliged to make any extraordinary, necessary expenses for the preservation of the thing, which were so urgent that he could not give the lender information thereof beforehand, the latter is bound to reimburse them to him.

1772. If the thing lent has such defects, that it could cause injury to the person, who makes use of it, the lender is responsible, if he has known those defects, and has not informed the borrower thereof.

THIRTEENTH TITLE.

OF LOAN FOR CONSUMPTION.

FIRST SECTION.

General dispositions.

1773. Loan for consumption is an agreement, by which the one party delivers to the other a certain quantity of consumable things, on condition that the latter shall return him as much of the same kind and quality.

1774. By the effect of this loan for consumption, the borrower becomes proprietor of the thing lent, and if it perishes in any manner soever, such loss is for his account.

1775. The debt, resulting from a loan of money, consists only of the sum of money, which is expressed in the agreement.

If before the period of payment, there is augmentation or diminution in the value of the specie, or change in the currency, the restitution of the sum lent shall take place in such specie, as is current at the time of the payment, calculated at their current value at that period.

1776. The rule, established in the preceding article, is not applicable, if in respect of the loan of a certain number of pieces of a particular coin, parties have expressly agreed that the same number and the same sort of pieces shall be restored. In this case the party who has received in loan must return the exact number of pieces of the same nature, and not more nor less.

If the same sort of pieces does not exist any more in sufficient quantity, the deficiency must be supplied with coins of the same metal, as near as possible of the same alloy, and jointly containing the same quantity of pure metal, as the deficient quantity of the pieces due, contained in pure metal.

1777. If gold or silver ingots, or other wares are lent, the debtor must always return an equal quantity and quality, although their value may have augmented or decreased, and he is not bound to anything more.

SECOND SECTION.

Of the obligations of the lender.

1778. The lender cannot demand again what has been given in loan, before the time stipulated in the agreement, shall have expired.

1779. No term having been stipulated, the judge can, when the lender claims restitution, according to circumstances, grant some delay to the party, who has received the thing in loan.

1780. If it has been agreed, that he who has received a thing or a sum of money in loan, shall return it, when he shall be able to do so, the judge shall, according to circumstances, fix the time for the restitution.

1781. The disposition of article 1772 is applicable to loan for consumption.

THIRD SECTION.

Of the obligations of the borrower.

1782. He who has borrowed something is bound to return it in equal quantity and quality, and at the time appointed.

1783. If he finds himself in the impossibility of complying therewith, he is bound to pay the value of the thing lent, and in this, regard shall be paid to the time and place, at which the thing was to have been restored, according to the agreement.

If this time and place are not appointed, the payment must be made conformable to the value, which the thing lent, has had, at the time when and at the place where the loan took place.

FOURTH SECTION.

Of loan on interests.

1784. It is allowed to stipulate for interests on loans of money or other consumable things.

1785. He who has borrowed, and has paid interests, which were not stipulated for, cannot reclaim them, nor deduct them from the capital, unless they exceeded legal interests, in which case that what has been overpaid, can be reclaimed or deducted from the capital.

The payment of interests not stipulated for does not oblige the debtor to pay them in the future; but interests stipulated for are due until restitution or consignment of the capital, even when either of the two may have taken place after the time that the debt became due.

1786. Interests are either legal or conventional. Legal interests are eight per Cent. The conventional interests may exceed the legal.

The amount of the interests stipulated for in the agreement must be specified in writing.

1787 If the lender has stipulated for interests, without the amount being specified, the borrower is bound to pay the amount of legal interests.

1788. The receipt of payment of the capital being given without reservation of interests, causes presumption of the payment of interests, and the debtor is discharged therefrom.

FOURTEENTH TITLE.

OF FIXED OR PERPETUAL RENTS.

1789. The establishment of a perpetual rent is an agreement, by which the lender stipulates for interests, on payment of a capital, which he accepts not to demand back.

1790. This rent is from its nature redeemable.

Parties can only agree that the redemption shall not take place until after the expiration of a certain time, which may not be fixed for longer than ten years, or without they having given previous notice to the creditor, at a certain period established by them beforehand, which however shall not be permitted to exceed one year.

1791. The debtor of a perpetual rent can be compelled to the redemption :

1. If he has paid nothing on the rents due during two consecutive years ;
2. If he neglects to furnish to the lender the security promised in the agreement ;
3. If he is declared in a state of failure or of notorious insolvency.

1792. In the two first cases, mentioned in the preceding article, the debtor can relieve himself of the obligation of redemption, if within twenty days, counting from the judicial sommation, he pays all the instalments due, or gives the security promised.

FIFTEENTH TITLE.

OF ALEATORY CONTRACTS.

FIRST SECTION.

General dispositions.

1793. An aleatory contract is an agreement, the results of which as regards benefits and losses, either for all the parties, or for some of them, depend on an uncertain event.

Of this nature are :

The contract of insurance ;

Bottomry ;

Life-annuities ;

Play and wager.

The two first are regulated by the Commercial Code.

SECOND SECTION.

Of the contract of life-annuity and of its consequences.

1794. A life-annuity can be settled by onerous title, or by act of donation.

It can also be acquired by testamentary disposition.

1795. A life-annuity can be settled, either on the life of him who pays the money, or of him to whom the enjoyment thereof is given, or on that of a third person, although he have not the enjoyment thereof.

1796. It can be settled on the life of one or more persons.

1797. It can be settled for the benefit of a third person, although the money be supplied by another person.

In this case it is however not subject to the formalities, required for donations.

1798. Every life-annuity, settled on the life of a person, who was dead on the day of the contract, is ineffectual.

1799. A life-annuity can be settled at such rate of rents, as parties shall deem fit to determine.

1800. The party, for whose benefit a life-annuity by onerous title has been settled, can demand the rescission of the agreement, if the debtor does not furnish him the stipulated security for its performance.

In case of rescission the debtor is bound to pay the stipulated rents in arrears, up to the day on which the capital shall be redeemed.

1801. Default of payment of the arrears of the life-annuity, does not give the receiver of the rent the right to demand the redemption of the capital, or the restoration of the thing ceded by him for this purpose; he has only the right to attack his debtor, and to levy on his property, for the arrears of rents, and to demand security for the rents to become due.

1802. If the debtor is declared in a state of failure or of notorious insolvency, the life-annuity shall be diminished in proportion to the other debts, and the estate is bound to insure to the receiver of the rent, the enjoyment of the life-annuity diminished in this way.

1803. The debtor cannot release himself from the payment of the life-annuity, by offering the restitution of the capital sum, and by relinquishing his demand for the rents paid; he is bound to continue the payment of the life-annuity, during the whole life of the person or persons, on whose life the rent is settled, however onerous the payment of this rent may become to him.

1804. The proprietor of a life-annuity has only a vested right in the annuity, in proportion to the number of days the person has lived, on whose life the rent is settled.

If however the agreement imports, that the rent shall be paid in advance, the right on the instalment, which ought to have been paid, is acquired from the day on which payment should have been made.

1805. Parties cannot stipulate that a life-annuity shall not be subject to any seizure, unless it were settled gratuitously.

1806. The receiver of the rent cannot demand the arrears thereof, except by proving the life of him, on whom the life-annuity is settled.

THIRD SECTION.

Of play and wager.

1807. The law does not allow any action for a debt proceeding from play or wager.

1808. In the above disposition are however not included those games, which are proper for bodily exercise, such as fencing, foot-races and the like.

Nevertheless the judge can reject or diminish the demand, when the sum appears to him to be excessive.

1809. Parties may not shun the dispositions of the two preceding articles by any novation of debt.

1810. In no case can he, who has voluntarily paid his loss, claim it back, unless there have been on the part of the one who has won, foul play, fraud or cheating.

SIXTEENTH TITLE.

OF MANDATE.

FIRST SECTION.

Of the nature of mandate.

1811. Mandate is an agreement, by which a person gives to another the power, and the latter accepts, to do a thing for the mandator, in his name.

1812. Mandate can be given and accepted by authentic act, by private writing, even by a letter, and also by word of mouth.

The acceptance of a mandate can also take place tacitly, and be inferred from the performance of the commission by the mandatory.

1813. Mandate is gratuitous, unless the contrary be stipulated.

1814. Mandate is, either special, and relative to one or more particular affairs, or general, and relative to all the affairs of the mandator.

1815. Mandate, conceived in general terms, embraces only acts of administration.

In order to alienate goods, or charge them with mortgage, to compound, or to perform any other act of ownership, an express mandate is required.

1816. The mandatory may do nothing beyond his mandate; the power to compound an affair does not at all include the authority of submitting it to the decision of arbiters.

1817. Women and minors can be chosen as mandatories; but the mandator has no other action against minors, than in conformity with the general dispositions, relative to the obligations of minors; and against married women, who have accepted the charge, without authorization of their husbands, no other than according to the rules, prescribed in the fifth and seventh title of the first book.

1818. The mandator can directly sue the person, with whom the mandatory has acted in that capacity, and demand the compliance with the obligation.

SECOND SECTION.

Of the obligations of the mandatory.

1819. The mandatory is bound to accomplish the commission, as long as he is not relieved from it, and is responsible for the costs, damages and interests, which may result from the non-execution of the commission.

He is likewise bound to finish the affair, which he has begun at the time of the death of the mandator, if any injury could result from not immediately concluding the affair.

1820. The mandatory is not only answerable for fraud, but also for faults, which he may have committed in the execution of his commission.

Nevertheless the responsibility on account of faults, shall be applied less rigorously against him, who takes a commission upon himself gratuitously, than against him, who receives any remuneration for it.

1821. The mandatory is bound to account for what he has done, and to render account to the mandator of all what he has received by virtue of his mandate, even though what he has received may not have been due to the mandator.

1822. The mandatory is responsible for the person, whom he has substituted for the execution of the commission :

1. If he has received no power to substitute another ;
2. If that power has been granted to him, without designation of a particular person, and the one, whom he has selected, is notoriously incapable or insolvent.

The mandator is always presumed to have given power to the mandatory to substitute another for the administration of goods, situated outside of the island, where the mandatory resides.

In all cases the mandator may attack directly the person, substituted by the mandatory.

1823. If several attorneys or mandatories are appointed in the same act, there is no joint and several obligation with regard to them, but for as far as it is expressly determined.

1824. The mandatory is indebted in interests on capitals, which he has employed for his own use, counting from the time, at which he employed them, and on sums which he must pay out for balance of account, from the day on which he is put in default.

1825. The mandatory, who has given proper notice of his power to the person, with whom he acts in this capacity, is not answerable as regards what has been done beyond his mandate, unless he had personally bound himself thereto.

THIRD SECTION.

Of the obligations of the mandator.

1826. The mandator is bound to comply with the obligations, contracted by the mandatory, conformable to the power, which he has granted to him.

He is not bound to what may have been done beyond it, but in as far as he has expressly or tacitly ratified it.

1827. The mandator is bound to reimburse to the mandatory the advances and expenses, which the latter has made for the execution of the commission, and to pay him his salary, if this has been stipulated.

If no fault is imputable to the mandatory, the mandator cannot dispense with this reimbursement and payment, although the affair may have failed.

1828. The mandator must also indemnify the mandatory for the losses which the latter may have sustained, at the occasion of the execution of his commission, provided no imprudence be imputable to him in that respect.

1829. The mandator owes interests to the mandatory for advances made, counting from the day, on which the advances were made.

1830. If a mandatory has been appointed by several persons to attend to an affair, which is common to them all, each of them is answerable for the whole towards him, for all the consequences of the mandate.

1831. The mandatory has the right to retain what he has in hands for the mandator, until everything is paid to him, which he has to claim in consequence of the mandate.

FOURTH SECTION.

Of the different manners, in which mandate ends.

1832. Mandate ends :

By the revocation of the power of the mandatory ;

By the renunciation of the commission by the mandatory ;

By the death, the curatorship, the state of failure or of notorious insolvency, either of the mandator as of the mandatory ;

By the marriage of the woman, who has given or received the commission.

1833. The mandator can revoke the mandate, whenever he thinks proper, and if there be ground for such, compel the mandatory to return him the procuration, which he has in hands.

1834. The revocation only made known to the mandatory, cannot be objected against third parties, who being ignorant thereof, have treated with him, saving the recourse of the mandator against the mandatory.

1835. The appointment of a new mandatory, for the performance of the same thing, implies the revocation of the first, counting from the day, on which this appointment has been notified to the latter.

1836. The mandatory can relieve himself of the commission, by renunciation to the mandator.

If however this renunciation by its untimeliness, or on any other account, through the fault of the mandatory serves to the prejudice of the mandator, he must be indemnified therefor by the mandatory ; unless the latter were in the impossibility of fulfilling the commission any further, without suffering thereby a considerable injury himself.

1837. If the mandatory is ignorant of the death of the mandator, or of the existence of any other cause which puts an end to the commission, that what he has done in such ignorance is valid.

In that case the obligations contracted by the mandatory, must be complied with in respect of third parties, who are in good faith.

1838. If the mandatory dies, his heirs must give notice thereof to the mandator, if the mandate be known to them, and provide in the mean time for that, which circumstances may require in the interest of the mandator ; under penalty of the compensation of costs, damages and interests, if there be ground.

SEVENTEENTH TITLE.

OF SURETYSHIP.

FIRST SECTION.

Of the nature of suretyship.

1839. Suretyship is an agreement, by which a third party binds himself, for the benefit of the creditor, to satisfy the obligation of the debtor, if the latter does not satisfy it himself.

1840. No suretyship can exist, or there must be a lawful principal obligation.

One can nevertheless become surety for an obligation, although it may be liable to be annulled by an exception, which only concerns personally the party bound, for example in the case of minority.

1841. A surety cannot bind himself to anything more, neither under conditions more onerous, than that to which the principal debtor is bound.

Suretyship can also be contracted for only part of the debt, or under conditions, less onerous. If the suretyship is contracted for more than the debt or under conditions more onerous, it is not altogether void, but limits itself to that which is comprised in the principal obligation.

1842. One can become surety without being requested thereto by the party, for whom one binds himself, and even without his knowledge.

One can also become surety, not only for the principal debtor, but also for his surety already given.

1843. Suretyship is not to be presumed, but must be expressly contracted ; it cannot be extended beyond the stipulations, under which it has been contracted.

1844. An indefinite security for a principal obligation extends to all the consequences of the debt, even to the costs of the action made against the principal debtor, and to all those which are made after the surety has been warned to this effect.

1845. The obligations of the sureties pass upon their heirs.

1846. The debtor who is obliged to furnish security, must offer for this purpose such a person, who has the capacity of binding himself, who is sufficiently solvent to be able to satisfy the obligation, and who is domiciliated in the colony.

1847. The solvency of a surety is only estimated by his immoveable properties, mortgages or inscriptions on the ledger of the national debt, except in commercial affairs, and when the debt amounts to a small sum. No regard can be paid to immoveable goods, about which there is dispute in law, or of which the discussion would be too difficult, by reason of their remote distance.

1848. When the surety, who has been accepted by the creditor voluntarily or by judicial decision, has become afterwards insolvent, a new surety must be furnished.

This rule admits only of exception, if the surety has been given by virtue of an agreement, in which the creditor has required a particular individual as surety.

1849. It suffices him, who is obliged by the law or in consequence of a judgment, to furnish security, and who may not be able to procure it, to give in lieu thereof, a pledge or mortgage.

SECOND SECTION.

Of the effects of suretyship between the creditor and the surety.

1850. The surety is not bound towards the creditor for payment, except on default of the debtor, whose properties must previously be discussed.

1851. The surety cannot demand that the debtor's properties be previously discussed :

1. When he has renounced the benefit of discussion ;
2. When he has bound himself jointly and severally with the principal debtor ; in which case the effects of his obligation are regulated according to the principles, established with regard to joint and several debts ;
3. If the debtor can bring in an exception, which regards him alone and personally ;
4. If the debtor is in a state of failure or of notorious insolvency ;
5. In case of judicial suretyship.

1852. The creditor is not obliged first to discuss the principal debtor, except when the surety demands it, on the first judicial proceeding, directed against him.

1853. The surety who requires the discussion of the principal debtor, must point out to the creditor the properties of the debtor, and advance the necessary money to effect the discussion.

He cannot designate goods, about which there is dispute in law, neither such as are mortgaged for the debt, and of which the debtor has no longer possession, nor finally goods situated outside of the colony.

1854. When the surety, conformable to the preceding article, has made a designation of properties, and has advanced the necessary money for the discussion, the creditor is, up to the amount of the goods designated, responsible with regard to the surety, for the insolvency of the principal debtor, which occurred subsequently by default of prosecutions.

1855. When several persons have become sureties for the same debtor and for the same debt, each of them is bound for the entire debt.

1856. Nevertheless each of them can, when he has not renounced the benefit of division, require on the first judicial proceeding, that the creditor should first divide his claim, and reduce it to the share of each surety virtually bound.

If, at the time that one of the sureties has caused division to be pronounced, one or more of the co-sureties are insolvent, such surety is bound to pay for the insolvents, in the proportion of his share ; but he is not answerable if their insolvency has occurred subsequent to the division.

1857. If the creditor himself and voluntarily has divided his action, he cannot come back against this division, even though some of the sureties were insolvent, anterior to the time at which he divided the debt.

THIRD SECTION.

Of the effects of suretyship between the debtor and the surety, and between the sureties among themselves.

1858. The surety, who has paid, has his recourse against the principal debtor, whether the security be given with or without his knowledge. This recourse takes place as well with regard to the capital, as to interests and costs.

With regard to the costs the surety has only his recourse, for as far as he has given notice in due time to the principal debtor, of the prosecutions directed against him.

The surety has also a recourse for the compensation of costs, damages and interests, if there be ground for such.

1859. The surety, who has paid the debt, enters ipso jure into all the rights, which the creditor has had against the debtor.

1860. If several principal debtors in the same debt were bound each for the whole, the person, who has put himself surety for them all, has his recourse against each of them for the recovery of everything what he has paid.

1861. The surety, who has paid the debt once, has no recourse against the principal debtor, who paid for the second time, if he has not given the latter notice of the payment made by him ; saving his action for recovery against the creditor.

If the surety has paid, without being proceeded against in law, and without having informed the principal debtor of it, he has no recourse against the latter, if this debtor, at the moment of the payment, may have had grounds to cause the debt to be declared extinct ; saving the action of the surety for recovery against the creditor.

1862. The surety can, even before he has paid, attack the debtor, in order to be indemnified by him, or to be released from his obligation :

1. If he is prosecuted in law for the payment ;
2. If the debtor is declared in a state of failure or of notorious insolvency ;

3. If the debtor has bound himself to procure him his discharge within a certain time ;
4. If the debt has become due by the expiration of the term, at which it was appointed to be paid ;
5. After the lapse of ten years, if the principal obligation has no fixed time at which it falls due ; unless the principal obligation be of such a nature, that it cannot become extinct before a determinate period, such as a guardianship.

1863. If several persons have become sureties for the same debtor, and for the same debt, the surety [who has acquitted the debt, has, in the cases provided for in n^o. 1 and 2 of the preceding article, his recourse against the other sureties, each for his share.

The disposition of the second part of article 1310 is applicable hereto.

FOURTH SECTION.

Of the extinction of suretyship.

1864. The obligation, resulting from suretyship, is extinguished by the same causes, by which other obligations end.

1865. The confusion, which takes place between the person of the principal debtor and that of the surety, when the one becomes heir to the other, does not in any way annul the action of the creditor against the person, who has become surety for the surety.

1866. The surety can avail himself against the creditor of all exceptions, which appertain to the principal debtor, and which are inherent to the debt.

But he cannot bring in any exceptions, which regard only the person of the debtor.

1867. The surety is released, when by the fault of the creditor he can no longer enter into the rights, mortgages and privileges of such creditor.

1868. The voluntary acceptance of any immoveable or other goods, made by the creditor in payment of the principal debt, releases the surety, even though the creditor should be evicted subsequently from the same thing.

1869. A simple delay of payment, granted by the creditor to the principal debtor, does not release the surety ; but the latter can, in such case, prosecute the debtor, to compel him to pay, or to procure him the release from his suretyship.

EIGHTEENTH TITLE.

OF COMPOSITION. (1)

1870. Composition is an agreement, by which the parties, on the surrender, promise or withholding of a thing, terminate a suit pending, or prevent a suit about to commence.

(1) "Transaction" would have been the proper word for "dading" ; but on account of the frequent use in the preceding part of this translation, of the word *transaction* for *handeling*, it has been here substituted by "composition" which is likewise an appropriate term. Besides this, the definition of article 1870 is in itself clear enough, to show the meaning of the term.

This agreement is only valid, if it is contracted in writing, although it may have reference to an affair, regarding which proof by witnesses could be admitted.

1871. In order to compound one must have the authority of being able to dispose of the objects, comprised in the composition.

Guardians and curators cannot compound, except by conforming themselves to the dispositions of the fifteenth and seventeenth title of the first book.

Public institutions cannot compound, except with observance of the formalities prescribed in the ordinances, which relate to them.

1872. One can compound for the civil claims, which result from an offence.

The composition does not at all prevent the prosecution of the public ministry.

1873. Compositions are limited to their object; the renunciation which is made therein of all rights, actions and claims must only be understood for as far as they relate to the dispute, which has given rise to the composition.

1874. Compositions only terminate those disputes, which are comprised therein, whether the parties have explained their intention in particular or general expressions, or whether this intention be inferred as a necessary consequence of what is expressed.

1875. If the party, who has compounded about a right, which he had directly, acquires subsequently a similar right from another, he is not bound, as regards the newly acquired right, to the anterior composition.

1876. Compositions, made by one of the interested parties, do not bind the others interested, and cannot be invoked by them.

1877. Compositions have between the parties the force of judgment in the highest resort.

They cannot be objected to, either for cause of error in the right, or for cause of lesion.

1878. Nevertheless a composition can be rescinded, when there has been error regarding the person, or regarding the object of the dispute.

It can be rescinded in all the cases, where there has been fraud or violence.

1879. The rescission of a composition can likewise be demanded, when in consequence of an error in facts, it is made respecting a title, which was null; except in the case where parties have expressly compounded regarding this nullity.

1880. A composition made on the strength of documents, which subsequently are found to be false, is altogether null.

1881. A composition regarding a dispute, which is already terminated by a sentence, having obtained force of judgment, but of which parties, or one of them had no knowledge, is null.

If the sentence, of which parties had no knowledge, was subject to any appeal, the composition is valid.

1882. If parties have compounded in general upon all matters, which they have between them, the documents which were then unknown to them, but which have been subsequently discovered, do not constitute ground for the rescission of the composition, unless they have been kept back by the act of one of the parties.

But the composition is null, if it had only one affair for its object, to which it may be evident, by the documents subsequently discovered, that one of the parties had not the least right.

1883. A mistake in calculation, committed in a composition, must be rectified.

FOURTH BOOK.

OF PROOF AND PRESCRIPTION.

FIRST TITLE.

OF PROOF IN GENERAL.

1884. Every one, who pretends to have any right, or alleges any fact to substantiate his right, or to controvert another's right, must prove the existence of that right, or of that fact.

1885. The means of proof consist of :

Written proof ;

Proof by witnesses ;

Presumptions ;

Admission ;

The oath ;

All these with observance of the rules prescribed in the following titles.

SECOND TITLE.

OF WRITTEN PROOF.

1886. Written proof takes place by means of authentic, or by means of private writings.

1887. An authentic act is that, which is passed in the legal form, by or before public functionaries, who are qualified thereto at the place, where it has been done.

1888. An act, which, on account of the incompetency or incapacity of the functionary, on account of a defect in the form, cannot be held as authentic, has however the force of a private writing, if it is signed by the parties.

1889. An authentic act establishes between parties and their heirs or assigns, a complete proof, of what stands mentioned in it.

1890. An authentic act does not however establish complete proof as regards what is expressed in it as a simple enunciation, except for as far as the enunciation stands in immediate connection with the subject-matter of the act.

If that, what is expressed therein, as a simple enunciation, does not stand in an immediate connection with the subject-matter of the act, it can only serve as a commencement of written proof.

1891. If an authentic act, of whatsoever nature, is accused of falsity, its execution can be suspended, conformably to the dispositions of the code of civil Procedure.

1892. Defeasances, made by separate act, only establish proof between the parties, who have concurred in such act, and their heirs or assigns, but they cannot operate against third parties.

1893. Are considered private writings acts under private signature, letters, registers, domestic papers and other writings, which have been drawn without the intermediary of a public functionary, or which after having been read to parties, are signed by them with a cross-mark, the genuineness of which is attested by a public functionary.

1894. A private writing, which is acknowledged by the person, against whom it is called in question, or which is held in a legal manner as acknowledged, establishes in respect of the signers, and their heirs and assigns, the same complete proof as an authentic act, and the disposition of article 1890 is in like manner applicable thereto.

1895. He, against whom a private writing is produced, is obliged positively to acknowledge or disacknowledge his writing or his signature; but it suffices his heirs or assigns to declare, that they do not acknowledge it as the writing or signature of the person, whom they represent.

1896. In case any one disacknowledges his writing or his signature, or if his heirs or assigns declare not to acknowledge it, the judge must command, that the genuineness thereof be investigated judicially.

1897. Private and unilateral obligations of debt, for the payment of ready money, or of a thing, on which a determinate value can be set, must be written throughout by the hand of the person who has signed it; or at least it is necessary that, besides the signature, there should be written underzeath, by the hand of the signer, an approval, containing in letters full out, the sum, or the amount, or the quantity of the thing due.

In default hereof the act signed can only be admitted as a commencement of written proof, if the obligation be denied.

The dispositions of this article do not apply to commercial affairs.

1898. If the sum, expressed in the body of the act, differs from that which is expressed in the approval, the obligation is accounted contracted for the smallest sum, even when the act, as well as the approval are written throughout by the hand of the person, who bound himself; unless it can be proved in which of the two parts of the document, the mistake has been made.

1899. Private acts have as regards their date, no force against third parties, except from the day that they have been recorded, in the manner to be regulated by resolution of the Governor, by a public functionary to be designated by this resolution; or from the day of the death of those, or one of those, who signed them; or from the day that their existence is proven in acts, drawn by public functionaries; or otherwise from the day on which the third party, against whom the act is brought to bear, has acknowledged in writing the existence of it.

1900. Registers and domestic papers do not establish proof in favour of the person, who has written them; they serve as proof against him:

1. In all the cases, in which those papers make positive mention of a payment received;

2. When they contain express mention, that the annotation is made in order to supply a defect in the title, for the benefit of him, in whose favour they indicate an obligation.

In all other cases the judge shall pay such regard to them, as he shall deem requisite.

1901. Merchant's books establish a proof against persons, who do not trade, as regards the quality and the quantity of the supplies, which are entered in them, provided it be proved from other sources, that the merchant was in the habit of delivering to the contra party such goods on credit, and provided also the books are kept in accordance with the formalities prescribed in the Commercial code, and finally that the merchant confirm the validity of his claim with oath.

If the merchant has died, his heirs must declare under oath, that they in good faith believe that the debt exists and is unacquitted.

Merchant's books, not properly kept, can however serve as proof against the merchant.

1902. Annotations made by a creditor upon a title, which has always remained in his possession, merit credence, even though they are neither signed nor dated by him, when the writing, tends to the discharge of the debtor.

The same applies to annotations, which the creditor has made upon the duplicate of a title, or upon an acquittance, provided this duplicate or acquittance be in the possession of the debtor.

1903. The proprietor of a title can demand the renewal of it, at his own expense, if the writing becomes illegible through age or from any other cause.

1904. If a title is in common between several persons, each of them is at liberty to demand, that it be put in deposit in a third place, likewise to cause a copy or extract of it to be made at his own expense.

1905. In every stage of a suit a party can request from the judge, that his contra party be commanded to lay over the documents, which are common to both parties, which relate to the affair in dispute, and which are in his custody.

1906. Tallies, corresponding with their double, merit credence between those, who are in the habit of proving in this manner the supplies in retail, which they make or receive.

1907. The force of a written proof lies in the original act.

When the original act exists, the copies and extracts merit credence only for as far as they correspond with the original document, the exhibition of which can always be demanded.

1908. When the original title no longer exists, the copies establish proof, with observance of the following dispositions.

1. The *grossen*, or first copies issued, establish the same proof as the original act; it is the same with respect to copies, which are made upon judicial authority, in the presence of parties, or these parties being duly summoned; as also with respect to such copies, which are made in the presence of the parties, and with their mutual consent;

2. The copies, which are made without the interference of the judge, or without the consent of the parties, and subsequent to the issue of the *grosse* or first copy, according to the minute of the act, by the notary, before whom that act was passed, or by one of his successors, or by functionaries, who in this capacity are the depositaries of the minutes, and qualified to issue copies, can be admitted by the judge as complete proof, in case the original act is lost ;
3. When the copies, which are made from the minute of an act, are not made by the notary, before whom this act is passed, or by one of his successors, or by public functionaries, who in their capacity are the depositaries of the minutes, they can never serve otherwise than as a commencement of proof by writing ;
4. Authentic copies of authentic copies, or of private acts, can according to circumstances establish a commencement of written proof.

1909. The transcription of an act in the public registers can only serve as a commencement of proof by writing.

1910. Acts of recognition release from the obligation of producing the original title, provided the tenor of the title be therefrom sufficiently evident.

1911. An act confirming or ratifying an obligation, against which the law admits an action for nullity or rescission, is only valid if it contains mention of the substance of this obligation, likewise of the reasons on account of which the rescission could be claimed, and of the intention to rectify the defect, on which this claim could be founded.

In default of an act of confirmation or ratification, it is sufficient, that the obligation be executed voluntarily after the period, at which it could have been confirmed or ratified in a valid manner.

The confirmation, ratification or voluntary execution of an obligation, made in the form and at the period required by the law, shall be accounted as a renunciation of the means and exceptions, which otherwise could have been objected to such act ; without prejudice however to the right of third parties.

1912. A donor cannot remedy by any act of confirmation, the defects of a donation, which is null in form ; such donation must, in order to be valid, be put anew in the legal form.

1913. The confirmation, ratification, or voluntary execution of a donation, made by the heirs or assigns of the donor after his death, debars them from the authority of alleging any defect in the form.

THIRD TITLE.

OF PROOF BY WITNESSES.

1914. Proof by witnesses is admitted in all cases, in which it is not excluded by the law.

1915. This proof shall not be admitted, to show the existence of any act or agreement, which contains either an obligation or a discharge of debt, when the subject-matter exceeds the sum or the value of three hundred guilders.

1916. No proof by witnesses shall be admitted respecting what is claimed against or beyond the contents of the written act, neither touching what may be alleged to have been said before, at the time, or subsequent to the making of such act, even though the sum or the value in dispute, amounts to less than three hundred guilders.

1917. The dispositions of the two preceding articles do not at all apply to commercial affairs.

1918. The disposition of article 1915 is applicable, when at the action, besides the capital sum, interests are also demanded, which added to the capital, exceed the sum of three hundred guilders.

1919. He who has made a demand exceeding three hundred guilders, can no longer be admitted to the proof by witnesses, even though he were to reduce his original demand to this sum.

1920. The proof by witnesses shall not be admitted in a suit, in which less than three hundred guilders is demanded, when the sum claimed forms the residue or a part of a larger active debt, which is not proved by writing.

1921. The rules laid down hereabove admit of exception, when there exists a commencement of proof by writing.

This denomination is applied to all written acts, which have emanated from the person, against whom the claim is made, or from the party, whom he represents, and which render probable the fact, which is alleged.

1922. The same rules admit likewise of exception, in all cases, where, from the nature of the affair, it has not been possible to procure a written proof.

This exception amongst other instances is applicable :

1. To obligations, arising from the force of the law, in consequence of man's action ;
2. To deposits from necessity, and to those which are made by travellers in the inn, where they have taken lodging ; all this according to the condition of the persons, and the circumstances of the case ;
3. To obligations, contracted at the event of unforeseen accidents, in which parties have not been able to make a written act ;
4. In case the title, which should have served as written proof, is lost by a fortuitous unforeseen occurrence, caused by irresistible force.

1923. In the cases, in which proof by witnesses is admitted, the following dispositions must be observed.

1924. The declaration of a single witness, without any other means of proof, merits no credence in law.

1925. If the separate and single testimonies of several persons, regarding different facts, by their corroboration and connection tend to substantiate a determinate fact, it is left to the discrimination of the judge to grant to those separate testimonies such force as circumstances may require.

1926. Every testimony must be clothed with reason of knowledge.

Individual meanings or supposition, formed by reasoning, are no testimonies.

1927. In the appreciation of the value of the testimony, the judge must pay particular attention to the mutual agreement of the witnesses; to the agreement of the testimonies with what is known from other sources in the suit touching the case; to the motives, which the witnesses may have had to represent the matter in one way or an other; to the life, the morals and the position of the witness; and in general, to every thing that could have an influence upon the greater or lesser degree of their veracity.

1928. All persons, competent to be witnesses, are bound to give testimony in law.

Nevertheless the following persons can excuse themselves from giving testimony :

1. Those, who are related to one of the parties in the collateral line in the second degree of consanguinity or affinity;
2. Those, who are related to the spouse of one of the parties, in the direct line unlimitedly, and in the collateral line in the second degree ;
3. All those, who are bound to secrecy, by reason of their position, profession or lawful situation, but only and exclusively in regard of that, of which the knowledge is confided to them in their capacity.

1929. Are considered as incompetent to be witnesses, and may not be heard, the relatives by consanguinity and affinity of one of the parties in the direct line, and the spouse, even after a divorce.

1930. The witnesses must swear or promise, according to the manner of their religious denomination, that they will tell the truth.

Those who do not belong to any recognised religious denomination, must make a promise, in the manner as prescribed in the second part of article 109 of the Code of Civil Procedure.

1931. Those, who have not arrived at the full age of fifteen years, likewise those, who are placed under curatorship on account of idiocy, insanity or madness, or who, pending the suit, are placed in provisional custody, on judicial warrant, cannot be admitted as witnesses.

The judge is however at liberty to hear without oath such minors, or also persons placed under curatorship, who have lucid intervals, but their declarations shall only be permitted to be considered as illucidation.

Accordingly the judge shall not give credence to what such incompetent persons declare to have heard, seen, been present at and experienced, even though such declaration be clothed with reason of knowledge ; but he shall only take their declaration to serve for the purpose of becoming acquainted with, and of leading the way to facts, which can be proved further through the ordinary means.

1932. As witnesses can be recused :

1. Those who in the collateral line are related to one of the parties by consanguinity or affinity, until the fourth degree inclusive ;
2. The relative by affinity of the spouse of one of the parties, in the direct line unlimitedly, and in the collateral line until the fourth degree inclusive ;
3. The presumptive heir, the donee, the domestics or servants of one of the parties, or he who has a direct or indirect interest in the suit ;
4. He, who is condemned to a corporal or infamous punishment, or even for cause of theft, swindling, falsity, or abuse of confidence, to a punishment not infamous ;
5. He, who is deprived by judicial sentence of the right of being sworn witness in civil cases.

1933. Nevertheless relatives by consanguinity and affinity, likewise domestics and servants, shall be neither incompetent nor recusable as witnesses, in suits regarding the civil state of the parties.

FOURTH TITLE.

OF PRESUMPTIONS.

1934. Presumptions are conclusions, which the law or the judge draws from a fact known to a fact unknown.

They are of a twofold nature :

Legal ;

And those, which are not based on the law itself.

1935. Legal presumptions are those, which are attached by virtue of a special disposition of the law, to certain acts or to certain facts.

Of this nature are among others :

1. Acts, which the law declares null, for the reason that they, by their nature and their quality alone, are presumed to have been made in order to avoid a disposition of the law ;
2. The cases, in which the law declares that the property or the liberation from debt, is inferred from certain determinate circumstances ;
3. The authority, which the law grants to a judicial judgment ;
4. The force which the law grants to the admission of one of the parties, or to his oath.

1936. The authority of a judgment does not extend any farther, than to the subject of the sentence.

In order to be able to invoke that authority, it is necessary, that the thing which is claimed should be the same, that the demand should be founded on the same cause, and be made by and against the same parties, in the same capacity.

1937. A sentence, having obtained force of judgment, by which a person is condemned to punishment for an offense, shall be admitted in a civil suit as a proof of the act committed, saving contrary proof.

1938. If a person has been acquitted from an offence, laid to his charge, this acquittal cannot be invoked before the civil judge in order to ward off a demand for indemnity.

1939. Sentences regarding the state of persons, given against the party, who was lawfully qualified to contradict the demand, are effective against each and every one.

1940. A legal presumption relieves the party, in whose favour it exists, from all further proofs.

No proof is admitted against a legal presumption, in case the law, on the ground of this presumption, declares null certain determinate acts, or denies the institution of action; unless the law itself may have allowed contrary proof, and without prejudice to what is established in respect of the judicial oath and the judicial admission.

1941. Presumptions, which are not based on the law itself, are left to the discrimination and to the prudence of the judge, who however may not pay regard to any other, than to those, which are weighty precise, determinate and mutually concordant.

Such presumptions can only be considered in those cases, in which the law admits proof by witnesses, and also in case a transaction or act is impeached, for cause of bad faith or fraud.

FIFTH TITLE.

OF ADMISSION.

1942. The admission, which is objected to a party, is made either judicially or extra judicially.

1943. An admission cannot be divided to the prejudice of him, who has made it.

The judge is however at liberty to divide the admission, if the debtor has for the sake of his discharge, adduced facts therein, which are proven false.

1944. The judicial admission establishes a complete proof against the party, who has made it, either in person, or by a special mandatory.

1945. The judicial admission cannot be revoked, unless it were proved, that it has been the result of an error regarding facts.

Under pretext of an error regarding law, it cannot be revoked.

1946. A verbal admission, made extra-judicially, cannot be invoked except in the cases, in which proof by witnesses is admitted.

1947. In the case, provided for at the final part of the preceding article, it is left to the discrimination of the judge, what force must be granted to a verbal admission, made extra-judicially.

SIXTH TITLE.

OF THE JUDICIAL OATH.

1948. The judicial oath is of a twofold nature :

1. That, which the one party defers to the other, in order to make the decision of the case depend thereon ; this is called decisory oath ;
2. That, which is put by the judge, *ex officio*, to one of the two parties.

1949. The decisory oath can be deferred regarding all disputes, of whatsoever nature, except those, respecting which parties would not be able to compound, or in which their admission could not be taken into consideration.

It can be deferred in every stage of the suit, even then when there exists no other means whatsoever, to prove the claim or the exception, respecting which the oath is claimed.

1950. This oath can only be deferred touching a fact, which should be performed personally by the party, on whose oath the decision is made to depend.

1951. He, to whom the oath is deferred, and who refuses to take it or to refer it back, or also he, who has deferred the oath, but to whom it has been referred back, and who refuses to take it, must be put in the wrong in his claim or exception.

1952. If the fact, touching which the oath is deferred, is not that of both parties, but only of the one, on whose oath the decision is made to depend, the oath may not be referred back.

1953. No oath can be deferred, referred back or accepted, except by the party himself, or by a person specially empowered thereto.

1954. He, who has deferred or referred back the oath, cannot retract it, if the contra-party has declared his readiness to take such oath.

1955. When he, to whom the decisory oath is deferred, or he to whose oath the decision is referred back, has taken the oath, the contra-party is not admissible to pretend the falsity thereof.

1956. The oath taken only affords proof in favour or against him, who has deferred it or referred it back, and of his heirs or assigns.

1957. Nevertheless a debtor, to whom the oath is deferred by one of the joint and several creditors, and who has taken it, is not thereby discharged further than as regards the share of such creditor.

The oath taken by the principal debtor, releases the sureties.

1958. The oath taken by one of the principal debtors serves for the benefit of the joint debtors, and that taken by the surety benefits the principal debtor, if namely, in these two cases, the oath has been deferred or referred back touching the debt itself, and not in respect of the joint and severalty of the obligation or of the suretyship.

1959. The judge can put the oath *ex officio* to one of the parties, either to make the decision of the cause depend thereon, or in order to determine thereby an amount to be adjudged.

1960. He can only do that in the two following cases :

1. If the demand or exception is not fully proven ;
2. If it is also not entirely destitute of proof.

1961. The oath regarding the value of the thing demanded, cannot be put by the judge to the plaintiff, except when it is impossible to determine this value in any other way.

The judge must even, in that case, determine the sum, to the amount of which the plaintiff shall be believed upon his oath.

1962. The oath, put by the judge to one of the parties, cannot be referred back by him to the contra-party.

1963. The oath must be taken before the high court of justice.

If a lawful impediment renders this impracticable, the high court can commission one of its members to receive the oath, who in such case shall repair to the dwelling or abode of the party, who must take the oath.

If in such case, this dwelling or abode may be too far distant, the high court can commission the judge of the domicile, or of the place of abode of the party, who must take the oath, to receive it.

1964. The oath must be taken in person.

For weighty reasons it shall be permissive to the judge, to allow to a party, to cause the oath to be taken by a special mandatory, appointed by authentic act.

In such case the mandate must contain in detail and precisely the oath to be taken.

No oath can be taken, but in the presence of the contra-party, or he being thereto properly summoned.

SEVENTH TITLE.

OF PRESCRIPTION.

FIRST SECTION.

Of prescription in general.

1965. Prescription is a means to acquire something, or to be liberated from an obligation, by the lapse of a certain determinate time, and under the conditions determined by the law.

1966. One cannot in anticipation renounce prescription, but one can renounce a prescription, already acquired.

1967. The renunciation of prescription takes place expressly or tacitly.

The tacit renunciation is inferred from an act, which causes presumption, that one has abandoned his right acquired.

1968. He, who is incapable of alienating, may not renounce a prescription acquired.

1969. The judge may not *ex officio* apply the means of prescription.

1970. In every stage of the suit one can avail himself of prescription, even in appeal.

1971. Creditors, or other parties interested can object to the renunciation of prescription made by the debtor, in fraud of their rights.

1972. One cannot obtain by prescription the property of things, which are not in trade.

1973. The State, the colony and public institutions are subject to the same prescriptions as private individuals, and can avail themselves thereof, in like manner.

1974. In order to acquire, by means of prescriptions, the property of a thing, there is required a continued and uninterrupted, peaceable public and unequivocal possession as proprietor.

1975. Acts of violence, of pure licence, or of simple toleration, cannot cause a possession, which has the force to create a prescription.

1976. The present possessor, who proves to have possessed of old, is presumed to have had the possession also during the intermediate time; saving contrary proof.

1977. In order to complete the time required for prescription, one can add to his own possession, that of the former possessor, from whom one has acquired the thing, in whatsoever manner one has succeeded to him, whether by general or particular title, whether by gratuitous or onerous title.

1978. Those, who possess for another, likewise their heirs, can never acquire a thing by prescription, by any lapse of time whatsoever.

Thus a lessee, depositary, usufructuary, and all others, who hold the thing from the proprietor, by precarious title, cannot acquire it by prescription.

1979. The persons, mentioned in the preceding article, can acquire the property by prescription, if the title of their possession is changed, either by a cause proceeding from a third party, or by their controversy against the right of the proprietor.

1980. Those to whom the lessees, depositaries and other precarious possessors, have transferred the thing, by a title calculated to transfer property, can acquire such thing by prescription.

1981. Prescription is computed by days, and not by hours.

It is acquired, when the last day of the time required, has expired.

SECOND SECTION.

Of prescription, considered as a means to acquire something.

1982. He, who acquires bonâ fide, and by virtue of a legal title, an immoveable, a rent, or any other active debt, not payable to bearer, obtains the property thereof, by way of prescription, by a possession of twenty years.

He, who has the possession in good faith during thirty years, acquires the property, without he can be compelled to show his title.

1983. A legal title, which is null on account of a defect in the form, cannot serve as the basis for a prescription by twenty years.

1984. Good faith is always presumed, and he who alleges bad faith, must prove it.

1985. It suffices that good faith existed at the moment of acquisition.

THIRD SECTION.

Of prescription, considered as a means of being released from an obligation.

1986. All actions, real as well as personal, are prescribed by thirty years, without the party, who alleges the prescription, being obliged to produce any title, or without any exception being permitted to be objected against him, derived from his bad faith.

1987. The action of masters and instructors in arts and sciences, for the lessons which they give by the month, or for a shorter time ;

That of keepers of inns and eating houses, for the supply of lodging and board ;

That of artisans and workmen for their salary ;

Are prescribed by the lapse of one year.

1988. The action of physicians, surgeons and apothecaries, for their visits, surgical operations and medicines ;

That of marshals on account of their salary for the signification of acts and for the execution of duties charged to them ;

That of keepers of boarding schools, on account of the boarding and tuition of their pupils, and of other masters, for the salary of their instruction.

That of domestics, for the payment of their wages ;

Are prescribed by the lapse of two years.

1989. The actions of practitioners for the payment of their salaries and advances, is prescribed by the lapse of two years counting from the day that judgment is given in the suit, or that parties have come to an arrangement, or that the mandate of the said practitioners is recalled.

With regard to cases not determinated, they can not demand payment of advances and salaries, which extend more than ten years backward.

The action of notaries for the payment of their advances and honorary is likewise prescribed by the lapse of two years, counting from the day on which the acts have been passed.

1990. The actions :

Of carpenters, masons and other head workmen, for the payment of their furnishings and salaries ;

Of merchants, for merchandize delivered to private individuals, not being merchants, or to merchants, who do not trade in the same line ;
Are prescribed by the lapse of five years.

1991. The prescription, mentioned in the four preceding articles, takes place, although there has been a continuation of supplies, services and labour.

It only ceases to run, when a written acknowledgment of debt is drawn, or the prescription is interrupted according to articles 1998 and 1999.

1992. Nevertheless those, to whom the prescription mentioned in articles 1987, 1988, 1989 and 1990, is objected, can demand from those, who avail themselves of it, the oath, that the debt has really been paid.

The oath can be deferred to the widows and heirs, or to the guardians of the latter, if they are minors, in order to declare, that they do not know, that the thing is due.

1993. Judges and practitioners are no longer answerable for the surrender of the documents, after the lapse of five years, since judgments are given in the suits.

In like manner the marshals are relieved from all responsibility in this respect, after the lapse of two years, counting from the execution of the commission, or the signification of the acts, with which they were charged.

1994. The interests of perpetual rents or of life-annuities ;

Those of alimentary pensions ;

The rents of houses and of rural property ;

The interests of sums of money lent, and in general, all that is payable by the year, or at shorter fixed periods ;

Are prescribed after the lapse of five years.

1925. The prescriptions, which form the subject of article 1987 and following, run against the minors, and against those who are under curatorship ; saving their recourse against their guardians or curators.

1996. Respecting moveable goods, which do not consist of rents, or of active debts, not payable to bearer, possession is equal to a complete title.

Nevertheless he, who has lost something, or from whom something has been stolen, can, during three years, counting from the day of the loss or of the theft, revendicate the thing lost or stolen, as his property, from the person in whose hands he finds it ; saving the recourse of the latter against the party, from whom he has obtained possession, and without prejudice to the disposition of article 633.

FOURTH SECTION.

Of the causes, which interrupt prescription.

1997. Prescription is interrupted, when the possessor is deprived, during more than one year, of the enjoyment of the thing, whether by the former proprietor, or even by a third party.

1998. It is also interrupted by insinuation, citation and every act of prosecution in law, all signified in due form by a competent functionary, in the name of the party having a right, to the party whom one desires to prevent from acquiring the prescription.

1999. Even the citation before an incompetent judge interrupts prescription.

2000. Prescription is however not interrupted, if either the insinuation or citation is recalled or annulled, or the plaintiff desists from his demand, or it be rejected, or that the instance be declared perempt, on account of the lapse of time.

2001. The acknowledgment, by words or deeds, of the right of the party, against whom the prescription runs, made by the possessor or the debtor, interrupts also prescription.

2002. The signification made, conformable to article 1998, to one of the joint and several debtors, or his acknowledgment, interrupts prescription against all the others, even against their heirs.

The signification made to one of the heirs of a joint and several debtor, or the acknowledgment of this heir, does not interrupt prescription with regard to the other co-heirs, not even in the case of a mortgage debt; unless the obligation were indivisible.

By this signification or acknowledgment prescription is not interrupted, with respect to the other joint debtors, except for as far as regards the share of such heir.

In order to interrupt prescription of the entire debt, in respect of the other joint-debtors, there must be a signification to all the heirs of the deceased debtor, or an acknowledgment made by all those heirs.

2003. The signification made to the principal debtor, or his acknowledgment, interrupts prescription against the surety.

2004. The interruption of the prescription by one of the joint and several creditors, serves for all the joint and several creditors.

FIFTH SECTION.

Of the causes which suspend the course of prescription.

2005. Prescription runs against all persons, except those in whose favour the law makes an exception.

2006. Prescription cannot commence nor continue against minors, and against those who are placed under curatorship, except in the cases determined by the law.

2007. Prescription does not take place between spouses.

2008. Prescription does not run against a woman, during her marriage :

1. In case the action of the wife could not be prosecuted, until after a choice to be made, touching the acceptance or renunciation of the community ;
2. In case the husband, having sold personal property of the wife, without her consent, must warrant the sale, and in all other cases, in which the action of the wife would fall back upon the husband.

2009. Prescription does not run :

With regard to an active debt, which depends on a condition, as long as that condition is not fulfilled ;

With regard to an action for warranty, as long as the eviction has not taken place ;

With regard to an active debt, which becomes due on a fixed day, as long as that day has not passed.

2010. Prescription does not run against an heir, who has accepted an inheritance under benefit of inventory, with regard to his active debts to the charge of such succession.

Prescription runs against a vacant succession, although it be not provided with a curator.

2011. It runs likewise during the time, that the heir is in deliberation.

General dispositions.

2012. The prescriptions, which have already commenced before the publication of this Code, shall be regulated conformable to the ancient ordinances.

Nevertheless the prescriptions, which had commenced at the aforesaid period, but for the completion of which, according to the ancient ordinances, more than thirty years were still required, counting from the aforesaid publication, shall be completed by the period of thirty years now introduced.

APPENDIX.

PUBLICATION No. 6 of 1875.

ORDINANCE by which judicial power in civil cases is granted to the Court of Justice at the island of St. Martin, etc.

MODIFICATION IN THE CIVIL CODE.

Art. 24.

Every thing in this Code, which apply to the High Court of Justice, the president, members, recorder and office of records of said high court, likewise to the practitioners, marshals, and the public ministry at said high court, is, within the jurisdiction of the courts of justice, applicable to these courts, to the presidents, members, recorders, and offices of records of these courts, likewise to the practitioners, marshals and the public ministry at these courts, with the exception of the cognizance by the superior judge of decisions, dispositions or commands of the canton judge, and of the subjects contained in articles 14, 15, 17, 20, 323, 324, 325, 328, 469, 470, 471, 472 and 474.

Art. 25.

The third part of article 251 and the first part of article 472 are annulled.

When the persons, to be heard by virtue of article 251 or article 471, have their domicile or find themselves at another island of the colony, than where the high court or a court of justice is established, the judge can commission the canton judge of their domicile or of their place of abode, to hear them.

Art. 26.

Art. 256 reads : The demand for divorce can only be instituted at the high court or a court of justice, according to the domicile of the husband, saving the case provided for by article 260.

Art. 27.

The decisions of a court of justice, pursuant to articles 433, 434 and 512 third part, take place subject to appeal.



CODE OF COMMERCE

FOR THE COLONY

OF

CURAÇAO.



TRANSLATED FROM THE DUTCH

BY

J. G. L. I. VAN ROMONDT.



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A. L. S. Muller & C. J. & A. W. Neuman Fz.

(in Stores, Vich)

CURAÇAO 1875.

CODE OF COMMERCE

FOR THE COLONY

OF

THE NETHERLANDS

TRANSLATED FROM THE DUTCH

BY

J. G. L. VAN ROMOND

Wm. & C. J. & A. W. Newman & Co.

1870

CODE OF COMMERCE.

GENERAL PROVISIONS.

Art. 1. The civil code is also applicable to commercial matters, as far as is not specially derogated therefrom by this code.

Besides the proofs, indicated by this and the civil code, testimonial proof shall be admitted in all cases, whatever be the nature or the amount of the subject matter, unless a special mode of proof is exclusively directed.

BOOK I.

OF COMMERCE IN GENERAL.

CHAPTER THE FIRST.

OF MERCHANTS AND ACTS OF COMMERCE.

2. Merchants are those, who exercise acts of commerce and make such their habitual profession.

3. By acts of commerce the law understands in general, the buying of wares for the purpose of selling the same again, by whole sale or by retail, whether raw, whether manufactured, or only to hire out the use thereof.

4. Under acts of commerce the law likewise includes :

1. The transaction of commerce on commission ;
2. All that relates to transaction by bills of exchange, without distinction as to whomsoever such may concern, and to promissory notes, only in regard to merchants ;
3. The transaction of merchants, bankers, cashiers, agencies for the payment of public funds as well to the charge of the kingdom and its colonies or transmarine possessions as of foreign powers, all in their quality as such ;
4. Whatever relates to obligations for the building, repairment and equipment of vessels, likewise the buying and selling of vessels for navigation as well within as out of the colony ;
5. The forwarding and transportation of merchandise ;
6. The buying and selling of tackling and stores (1) for vessels ;
7. Every association of owners of vessels, hiring out or affreightment of vessels, likewise bottomry loans and all other contracts in respect of maritime commerce ;

(1) Stores. Victuals and provisions for a ship's company. Bouvier.

8. The hiring of masters, officers and crews and their engagements, for the service of merchant vessel ;
 9. The transactions of factors, shipbrokers (cargodoors), conveyers (convooilopers) bookkeepers and other employers of merchants, in respect of the commerce of the merchant ;
 10. Insurances of whatever nature.
5. The obligations arising from the collision (1) of vessels, assistance or rescue and salvage by shipwreck, stranding and flotsam ; from jetsam and average are commercial matters.

CHAPTER THE SECOND.

OF MERCHANTS BOOKS.

6. Every merchant is bound to keep a day-book, wherein, from day to day, in the order of time, without vacant spaces, interlineations or marginal notes, must be recorded his debts and credits, his business transactions, his negotiation (2), acceptances or indorsements of bills of exchange and other negotiable paper, his engagements, and, in general, that which he receives and pays out of whatsoever nature ; the whole independent of such other books as are usually kept in commerce.
7. He is obliged to preserve the letters which he receives, and to keep a letterbook of those which he sends away.
8. He is obliged annually, within the first six months of each year to make a balance sheet, to inscribe it in a register set apart for this purpose, and to sign it in his own handwriting.
9. Merchants are bound to preserve their books thirty years.
10. If the transaction is not wholly denied, or the existence of the same in general is proven, merchants books properly kept, if required strengthened with oath or confirmed by death, establish proof between merchants in matters concerning their commerce, with respect to the time of the transaction and the delivery, the quality, the quantity and the price of the goods, subject however to counter proof ; letterbooks also, properly kept can be admitted by the judge as a means of proof.
11. No one can be obliged to lay open his books, balance sheets and other papers relative thereto, except only in behalf of one, who as heir, as interested in a community, as partner, as principal of factor or administrators, has a direct interest therein, and lastly in case of failure.

(1) Collision. In Maritime Law. The act of ships or vessels striking together or of one vessel running against or foul of another. In the original text the different ways in which collision takes place are specially set forth, but which are all comprised in the term collision.

(2) Negotiation. In Mercantile Law. The act by which a bill of exchange or promissory note is put into circulation by being passed by one of the original parties to another person. Bouvier.

12. Pending a suit at law, the judge can order, at the request of one of the parties, or by virtue of his office, the production of the books in order to cause inspection thereof or extracts therefrom to be taken, for as far as relates to the point at issue.

In case said books are at another place than that, where the judge, before whom the case is pending, holds his sitting, he is at liberty to empower the local judge to inspect the said books and to make and transmit a report of his finding.

13. He, who neglects to comply with the judicial order to produce his books, or, who refuses to produce them, when the adverse party is willing to be governed by the same, creates thereby a presumption to his prejudice.

In both cases the judge can impose the oath on the adverse party, when even no other proof exists.

CHAPTER THE THIRD.

OF PARTNERSHIP IN COMMERCE.

SECTION THE FIRST.

General provisions.

14. The law recognizes three sorts of partnership for commerce: (1)

Partnership under a firm ;

Partnership by way of money contribution, otherwise called en commandite ;

Anonymous partnership.

15. The engagements of commercial partnerships are regulated by the agreements of the partners, by the special laws of commerce, and by the civil law.

SECTION THE SECOND.

Of partnership under a firm, and of that by way of money contribution otherwise called en commandite.

16. Partnership under a firm is that, which two or more persons contract, for the purpose of carrying on commerce under a collective name.

17. Each of the partners, who is not excluded therefrom, is competent to act in the name of the partnership, to give out and receive moneys, and to bind the partnership to third persons, and third persons to the partnership.

This provision is not applicable to transactions foreign to the affairs of the partnership, nor to those which the partners were excluded from by the terms of the agreement.

(1) See Bouviers's Law dictionary page 294 on the above classification of partnership as derived from the french code of commerce.

18. In partnerships under a firm each of the partners is personally liable for the whole of the engagements of the partnership.

19. Partnership by way of money contribution, otherwise called *en commandite*, is contracted between one person, or between many partners bound in entirety, (1) and one or more other persons as money contributors.

A partnership can thus be at the same time a partnership under a firm, in respect of the partners under the firm, and a partnership by way of money contribution.

20. Saving the exception, contained in the second paragraph of article 30, the name of the partner by way of money contribution may not be employed in the firm.

This partner may not perform any act of administration, nor may he be employed in affairs of the partnership, not even by virtue of a *procuration*.

He is not further liable for losses than for the amount of money, which he brought or ought to have brought in the partnership, and he can never be obliged to return profits enjoyed.

21. The partner by way of money contribution, who contravenes the provisions of the first or second clause of the preceding article, is bound in entirety for all the debts and engagements of the partnership.

22. Partnership under a firm must be contracted by authentic or private act, nevertheless the omission of an act can never be opposed to third persons.

23. Partners under a firm are bound to cause the act to be inscribed upon the register set apart for that purpose at the office of records (*griffie*) of the canton court at the place or places where the partnership is established.

24. It is however optional to the parties to cause only an extract of the act to be inscribed, provided that extract is drawn up in authentic form or subscribed by all the partners.

25. Every one can examine the inscribed act or the extracts therefrom, and can obtain copy of the same, at his own expense.

26. The extract mentioned in art. 24, must contain :

1. The name, christian name, the profession and the domicile of the partners under the firm ;
2. The name or title of the firm, with mention if the partnership is general, or if it is limited to any particular branch of commerce, and, in the latter case, with mention of that particular branch ;

(1) The terms "in entirety, severally and jointly" each for the whole "and the one for the other" and "in solido" are interchangeable.

By the seventh section of the civil code obligations in entirety are regulated as follows. See appendix.

3. The indication of the partners, who are excluded from signing for the firm ;
4. The time, at which the partnership begins and terminates ;
5. And further, in general, such parts of the agreement, which must serve to determine the rights of third persons towards the partners.

27. The inscription must be dated on the day of the delivery of the act or extract at the office of records (griffie).

28. The partners are moreover obliged to cause an extract of the act, conformable to the direction of article 26, to be published in one of the newspapers circulating in the colony, likewise by hand bill affixed at the building, where the judge, indicated by article 23, holds his sittings.

29. As long as the inscription and the publication have not taken place, the partnership under a firm, in regard to third persons, shall be considered as general for all commercial transactions, as contracted for an indefinite time, and as not excluding any of the partners from the right of acting and signing for the firm.

If there exists a difference between what has been inscribed and what has been published, such stipulations only shall operate against third persons, which have been published, according to the preceding article.

30. The firm (1) of a dissolved partnership can, either by virtue of the agreement, or if the former partner, whose name appeared in the firm, expressly gives his consent, or, in case of death, if his heirs make no opposition thereto, be continued by one or more persons, who in proof thereof, must pass an act, and cause it to be inscribed and published in the way and manner as directed by article 23 and what follows, under pain as mentioned by art. 29.

The provision of the first clause of article 20 is not applicable, if the retired partner, from partner under a firm, has become partner by way of money contribution.

31. The dissolution of a partnership under a firm before the time fixed by the agreement, or brought about by cession or renuntiation, the continuation thereof after the stipulated time, likewise all changes made in the original agreement, which concern third persons, are subject to the aforementioned inscription and publication.

The omission thereof has for result, that the dissolution, cession, renuntiation or changes do not operate against third persons.

If the inscription and publication have been neglected, on continuation of the partnership, the provisions of article 29 are applicable.

32. On the dissolution of a partnership, the partners, who have had the right to direct the business, shall be obliged to liquidate the affairs of the former partnership under the name of the late firm, unless otherwise stipulated in the agreement, or that the collective partners, (those

(1) Firm, name or title.

by way of money contribution not included therein) individually and by majority of votes, had appointed another liquidator.

If there is a tie of votes, the High Court of Justice shall decide in such manner, as it shall deem most advisable in the interest of the dissolved partnership.

33. If the cash of the dissolved partnership is not sufficient to pay the debts demandable, they, who are charged with the liquidation may demand the necessary funds, which each of the partners has to contribute for his share in the partnership.

34. The moneys, which pending the liquidation can be missed from the partnership cash, shall be provisionally divided.

35. After the liquidation and the dissolution, if nothing has been agreed there about, the books and papers, which belonged to the dissolved partnership, shall remain in the care of that partner, appointed for this purpose by majority of votes, and, in case of a tie, by the cantonjudge.

CHAPTER THE THIRD.

OF ANONYMOUS PARTNERSHIP IN COMMERCE.

36. The anonymous partnership has no firm, neither bears the name of one or more of the partners, but derives its title only from the subject-matter of its commercial undertaking.

Before it can be established, the act of its formation, or a project thereof, must be sent to the Governor, for the purpose of obtaining thereon his assent.

Alike assent is required upon every change in the conditions and prolongation of the partnership.

37. If the partnership is not contrary to good morals or the public order, and if the act contains no stipulations against what has been directed by art. 38 till 55, the assent shall be given.

In case the assent is refused, the reason thereof shall be communicated to the petitioners for their information.

No anonymous partnership, to which the Governor's assent has been given, shall be dissolved by him, because of inobservance of the stipulations and conditions of the act on the part of the administrators.

38. The act of partnership must be passed notarially, under pain of nullity.

The partners are obliged to cause the act in its entirety, likewise the assent, to be inscribed upon the registers set apart for that purpose, and to publish the same in one of the newspapers circulating in the colony.

They must moreover make a publication, in the manner mentioned in the end of article 28, containing information of the existence of the anonymous partnership, with mention of the date and the number of the newspaper, in which the act is inserted.

The whole of the above is applicable to changes in the conditions, or in case of prolongation of the partnership.

The provision of article 25 is likewise applicable in this case.

39. As long as the inscription and publication mentioned in the preceding article have not taken place, the administrators are liable in entirety for their transactions to third persons.

40. The capital of the partnership is divided in actions or shares.

The partners or holders of those actions or shares (actionaries), are not further liable than for the full amount of the same.

41. No actions or shares can be issued in blank as long as their full amount is not paid in to the partnership cash. (1)

42. The manner in which the transfer of actions or shares, issued in the name of the person, takes place, shall be prescribed in the act; it can be effected by a declaration of the partner and the transferee notified to the administrators, or by a similar declaration inscribed upon the books of the partnership, and subscribed by or on the part of both parties.

43. If the full amount of such action or share has not been deposited, the original partner or his heirs or assigns remain bound to the partnership for the payment of what is due, unless the administrators, and the commissaries, if there are any, had expressly admitted the new transferee, and discharged the first mentioned from all liability.

44. The partnership is managed by administrators, actionaries or others, whether salaried or not, appointed for this purpose by the partners, with or without supervision of commissaries.

The administrators may not be irrevocably appointed.

45. The administrators are not further liable than for the due execution of the trust delegated to them; they are not personally liable to third persons in consequence of the engagements of the partnership.

If they however violate one or more of the provisions of the act or the subsequent changes in the conditions, they are answerable in entirety to third persons for the damages, which those third persons have suffered thereby.

46. Anonymous partnership must be contracted for a determinate time, subject however to prolongation, each time, after the expiration of that term.

47. As soon as it is evident to the administrators, that the capital of the partnership has undergone a loss of fifty per centum, they are obliged to make mention thereof in a register kept for this purpose at the office of records (griffie) of the High Court of Justice, likewise to give notice in manner as directed by article 28.

(1) This expression is taken from the English translation of the French Civil Code by Bryant Barrett, of Gray's inn.

If the loss amounts to seventy five percent, the partnership is by virtue of the law dissolved, and the administrators are holden in entirety to third persons for all engagements, which they have contracted, after the existence of that diminution was or ought to have been known to them.

48. In order to prevent the dissolution, in manner aforesaid, provision can be made by the act for the establishment of a reserve fund, from which the deficiency wholly or partly can be drawn.

49. No fixed interest can be stipulated in the act.

The dividends are made from the revenue, after deduction of the expenses.

It may however be stipulated, that the dividends shall not exceed a certain amount.

50. The assent of the Governor shall not be given, unless it is evident, that the first founders represent together at least one fifth of the partnership capital ; a term shall moreover be appointed, within which the remaining actions or shares must be placed.

This term can always be prolonged by the Governor at the request of the founders.

51. The partnership cannot commence unless at least ten percent of the collective capital be paid in.

52. If the duties of the commissaries are merely confined to supervise the administrators, and they therefore, in no case, take part any way in the direction, they can be authorised by the act to examine and approve the accounts of the administrators, in the name of the partnership.

In the contrary case such examinations and approval must be made by the partners, or persons thereto designated by the act.

53. In partnership of insurance on determinate subjects, a maximum must be fixed by the act, above which, may not be insured for one and the same subject ; unless the partners, by an express stipulation, had left such to the decision of the administrators, with or without the commissaries.

54. The act shall set forth, in what manner the right of suffrage shall be exercised by the partners. Nevertheless the same person shall not be entitled to more than six votes for himself, if the partnership consists of an hundred or more actions or shares ; and not more than three votes, if the same amounts to less.

No administrator or commissary may take part in the elections as attorney.

55. The administrators are bound to make a report once a year of the profits made and the losses sustained by the partnership in the preceding year.

That report can be made either at a general meeting, or by sending a statement to each partner, or by giving notice to the partners that the accounts are open for examination, during a certain time to be fixed by the act.

(II)

56. A dissolved partnership shall be liquidated by the administrators, unless otherwise directed by the act.

The provision of article 35 is in this case applicable.

SECTION THE FOURTH.

Of transactions for mutual account.

57. Besides the three sorts of partnership afore mentioned, the law recognizes also transactions for mutual account.

58. These transactions have reference to one or more particular or determinate commercial undertakings; they take place in regard of objects and under such conditions, as agreed between the participants.

They require no written act, and are not subject to the further formalities and provisions prescribed in regard of partnership.

They give to third persons no action at law but against the one of the participants, with whom said third persons treated.

CHAPTER THE FOURTH.

OF CASHIERS.

59. Cashiers are persons, to whom, in consideration of a certain reward or commission, moneys are entrusted for save keeping or for making payments.

60. A cashier suspending payment or failing, is presumed to have caused by his own fault the embarrassment of his affairs.

CHAPTER THE FIFTH

OF COMMISSION MERCHANTS (1) SHIPPERS, CARRIES, AND
OF SKIPPERS (MASTERS) NAVIGATING ALONG
THE COAST.

SECTION THE FIRST.

Of commission merchants

(Factors). (1)

61. A commission merchant is one, who in his own name or firm transacts commercial affairs by order and for account of another, in consideration of a certain reward or commission.

62. The commission merchant is not holden to disclose to the one with whom he deals, the person for whose account the acts.

He is directly liable to the one with whom he deals, just as if it were his own affair.

(1) " The business of factors in the united states is done by commission merchants, who are known by that name, and the term factor is but little used."

CENTRALE BOEKERIJ
Kon. Inst. v. d. Tropen
AMSTERDAM

63. The principal has no action against the one, with whom the commission merchant has dealt, neither can the one, who has dealt with the commission merchant hold the principal liable.

64. If a commission merchant has however acted in the name of his principal, his rights and obligations, likewise in respect to third persons, shall be regulated by the provisions of the civil code in the chapter on procuration.

65. A commission merchant, for the claims which he has as such to the charge of the principal, as well for moneys advanced to him as for the yet current engagements, which he contracted for him, has a privilege on the value of the goods and effects, which the principal sent him from beyond the colony, to be sold for his account, if they are at his disposal in one of his store rooms, or in a public depository, or if they are in his possession in whatever other manner, or if he, before their arrival, can prove, by a bill of lading, that they have been shipped to him.

66. A similar privilege belongs to the commission merchant, to whom goods and effects have been sent for the same object, from an island belonging to the colony, but only and exclusively for the moneys which he has advanced, the interests and costs which are due him, or the engagements which he has contracted, in respect of the goods and effects, on which he wishes to exercise his privilege.

67. If the goods and effects have been sold and delivered for and on account of the principal, the commission merchant shall reimburse himself from the proceeds of the sale, the amount of the moneys advanced by him, interests and costs, and such by preference over the other creditors of the principal.

68. If the principal has sent from beyond the colony goods or effects to the commission merchant, with direction to keep them in deposit until further order, or has limited his power to sell them, and the said principal has failed to satisfy the claims, which the commission merchant has against him, and which are privileged according to article 65, the commission merchant can, on production of the necessary documental proofs, and on a simple petition, obtain from the cantonjudge of his domicile, authorisation to cause to be sold in public the goods or effects, on which he is privileged for reason above mentioned, and that, whether the whole of the goods or effects, or such part as the judge, according to the amount of the debt, shall order.

69. A commission merchant, who has bought goods or effects for account of a principal residing out of the colony, and who is in possession of the same, can besides the right of retention allowed him by art. 1831 of the civil code, if the principal fails to reimburse him for advances for such purchase, with the interest and costs, obtain from the cantonjudge of his domicile, authorisation to sell these goods and effects in the same way and to the same end as stipulated in the preceding article.

70. Loans, advances or payments made by a commission merchant or consignee on goods or effects intrusted or consigned to him, by one residing at the same island with him, give to the commission merchant or consignee no preference above other creditors, unless those goods or effects were pledged to him by a formal act, conformable to the provisions of the civil code.

SECTION THE SECOND.

Of Forwarders.

(Forwarding-Merchants.) (1)

71. The forwarder is one, who charges himself with causing merchandise and goods to be transported by land or by water.

He is obliged to inscribe distinctly in a journal the nature and the quantity of the goods or merchandise to be transported, likewise, if such be required, their value.

72. He is answerable for the regular and as far as possible speedy forwarding of the merchandise and goods received by him for that purpose, and must observe all those means of security, which are within his reach, towards a proper delivery.

73. He is answerable, even after the forwarding, for the damage or the loss of merchandise and goods, which can be imputed to his fault or imprudence.

74. He is also answerable for the intermediate forwarders which he employs.

75. The bill of lading (*vrachtbrief*) is the evidence of the agreement between the consignor or the forwarder, and the carrier or the master, and contains, besides what may have been agreed between parties, as well concerning the time within which the transportation must be accomplished, and the indemnity in case of delay (2), or otherwise :

1. The denomination and the weight or the measure of the goods to be transported ;
2. The name of the person, to whom the merchandise is sent ;
3. The name and the domicile of the carrier or the skippers ;
4. The amount of the freight ;
5. The date ;
6. The signature of the consignor or of the forwarder.

The bill of lading must be inscribed by the forwarder in his journal.

(1) Forwarding-Merchant. One who sends forward or transmits goods. Webster.

(2) The delay of a vessel by the freighter beyond the time allowed for loading, unloading or sailing, is called *demurrage*.

SECTION THE THIRD.

Of carriers, and of masters navigating along the coasts.

76. The carriers and masters are answerable for all damages which have befallen the merchandise or goods received for transportation, except such as have been caused by a defect of the article itself, by superior force, or by the fault or negligence of the consignor or forwarder.

77. The carrier or the master is not liable for delay, if the same is caused by superior force.

78. The delivery and acceptance of the transported merchandise and goods, and the payment of the freight extinguish every action against the carrier or master on account of damage or diminution, if the defect was outwardly visible.

Whether the freight be paid or not, the judicial inspection can be made after acceptance of the goods, if the damage or diminution was not outwardly visible, provided the said inspection be asked for within twice twenty four hours after the receipt, and the identity of the goods be established.

79. In case of refusal to receive the merchandise or goods, or of a disagreement in regard thereof, the canton judge, takes on a simple petition, after having heard the adverse party, if present at the place, the necessary measures for the examination of the merchandise by experts; he can likewise order that the goods be lodged in a suitable depository, in order to recover thereon the amount of the freight and expenses due the carrier or the master.

The canton judge is competent to grant authorisation, in the same way as directed above, for the public sale of perishable wares, or of such portion of the goods as is necessary for the payment of the freight and costs.

80. Every action at law against the shipper, carrier or master, on account of a total loss, delay in the delivery, or damage of the merchandise or goods, is prescribed after the term of six months, in regard of shipments made within the colony, and after the lapse of a year, in regard of shipments made from the colony to other places, to count, in case of loss, from the day that the transportation of the merchandise or goods should have been accomplished, and, in case of damage or delay in the delivery, from the day that the merchandise or goods arrived at the place of their destination.

This direction is not applicable in case of fraud or unfaithfulness.

81. The rights and obligations concerning navigation, regulated by the second book, are likewise applicable to navigation along the coasts, as far as this is expressly directed in the last chapter of that book.

82. The provisions of this chapter are not applicable to rights and obligations between purchaser and seller.

CHAPTER THE SIXTH. OF BILLS OF EXCHANGE.

SECTION THE FIRST.

Of the nature and the form of Bills of Exchange.

83. A bill of exchange is a writing, dated in a place, by which the subscriber empowers some one to pay in another place, either at sight or after sight, a sum of money therein named, to a person designated, or to his order, with acknowledgment of value received or value on account.

As different places within the colony, are accounted the different islands, of which the colony consists.

84. A bill of exchange can also be drawn :

- a. to the order of the drawer ;
- b. on a determinate person, and payable at the domicile of a third ;
- c. for account of a third person.

85. Bills of exchange containing a fictitious statement in regard of name or domicile, or of the place where they were drawn or where they are payable, are only valid as a simple acknowledgment of a debt, (1) if in other respects the necessary formalities have been observed.

86. A bill of exchange can be drawn in sets, called the first, second, third etc. of exchange.

SECTION THE SECOND.

Of the obligation between the drawer and the drawee.

87. The drawer is obliged, if the drawee exacts it, and if nothing to the contrary is stipulated, to deliver the bill by first, second and third of exchange whereof mention must be made in each bill, all of which stand for one, and one for all.

88. The drawer is obliged, at the election of the drawee, to make the bill of exchange payable either to the drawer himself, or to any other person, in both cases to order or without mention of the order.

89. The drawer, or the one for whose account the bill of exchange is drawn, is bound to take care, that on the day of its maturity, the drawee be provided with the necessary funds for its payment, even if the bill be made payable by a third person, it being however understood, that the drawer himself, in all cases, remains personally responsible to the holder and the antecedents indorsers.

90. The drawee is accounted to have in hands the necessary funds, if, at maturity of the bill of exchange, or at the time when the same, pursuant to article 137, is held to have become due, he is owing to the drawer, or to the one for whose account it was drawn, a sum demandable, at least corresponding with the amount of the bill.

(1) "Due bill".

91. If a bill of exchange is protested for non acceptance or non payment, the drawer is holden to guaranty, even though the protest were not made in time. If he however, in the last case, proves, that the drawee, on the day when the bill became due, had in hands the necessary funds for its payment, he is oxonerated therefrom.

If, in that case, the necessary funds had only partly been provided, the drawer is responsible for the deficiency.

92. If the drawee has not accepted the bill of exchange, and the holder has neglected to cause the same to be protested in time, the drawer is nevertheless holden to cede and transfer to the last mentioned party (the holder) the title to the funds, which the drawee had in hands for him on the day that the bill of exchange became due, and such to the amount signified in the bill; and he must furnish the holder, at the expense of the latter, the necessary proofs to establish the said title. If the drawer has been declared in a state of failure, the curators of his estate are holden to the same obligations, unless they prefer to admit the holder as creditor, for the amount of the bill of exchange.

93. The holder of a protested bill of exchange has in no case any right to the funds, that the drawee has in hands for the drawer. If the bill of exchange is not accepted, those funds belong, in case of failure of the drawer, to his estate.

In case of acceptance, the funds remain for the benefit of the drawee, to the amount of the bill of exchange, saving his obligation to satisfy his acceptance with respect to the holder.

94. If the bill of exchange is drawn to the order of a third person, only for the purpose of recovering payment thereof, such constitutes between the drawer, or the one for whose account the bill is drawn, and the drawee, merely a procuration, in which however is comprized the right to transfer the property in the bill of exchange by indorsement.

SECTION THE THIRD.

Of acceptance of bills of Exchange, and of guaranty called aval.

95. A bill of exchange most be accepted on presentment, or at the latest within twenty four hours there after, without distinction between Sundays or other days.

If after this term, the bill of exchange is not returned, with or without acceptance, the one who has retained it, is liable to the holder for compensation, of costs, damages and interests.

96. He who has the necessary funds in hands, especially destined for the payment of a bill of exchange, is bound to accept it, under pain of compensation of costs, damages and interests to the drawer.

97. A promise to accept a bill of exchange is not equivalent to an acceptance; but it gives to the drawer an action at law for the recovery of damages against the promisor, who refuses to comply with his promise.

These damages consist in the costs of protest and reexchange, if the bill of exchange was drawn for the drawers own account.

If the bill was drawn for account of a third person, the damages and interests consist in the costs of protest and reexchange, and in the amount which the drawer, advanced to said third person on the faith of the bill of exchange, in consequence of the assurance given by the promisor.

98. The acceptance must be put distinctly on the bill on exchange by the drawee, and subscribed by him.

The acceptance must be dated, if the bill of exchange is drawn at a certain time after sight.

In default of date, the holder can exact payment on expiration of the term therein expressed, to count from the day on which the bill was drawn.

99. The holder of a bill of exchange, drawn in places within the limits of the colony, either at sight or at a certain time after sight, must exact the acceptance or the payment thereof within the following terms, after the date of the bill of exchange, and such under pain of losing his recourse on the indorsers, and on the drawer, if the latter had provided funds for the payment.

These terms are fixed as follows :

For bills of exchange drawn in one of the West India islands, and in places belonging to the states of America on the Atlantic Ocean between Brazil and North America, at six months ;

For bills of exchange drawn in other than the aforementioned parts of the Continent and islands in America, from the Continent and the islands of Europe, from the Levant, from the northern and western coasts of Africa until and inclusive of the Cape of Good Hope, and from the African islands situated to the west of that hemisphere, at a year ;

For bills of exchange drawn in all other parts of the world, at two years.

The terms are doubled in time of maritime war.

All the above mentioned provisions are reciprocally applicable to bills of exchange at sight, or at a certain time after sight, drawn in the colony on the places above indicated.

The above mentioned term of six months is reduced to three months for bills of exchange, which are drawn in one of the islands Curaçao, Bonaire or Aruba, on one another of those islands, or in one of the islands St. Martin, St. Eustatius or Saba, on one another of those islands.

100. The acceptance of a bill of exchange, payable in another place than where the acceptor resides, must indicate the domicile, where the payment or the protest must be made.

101. If the person at such domicile fails, after the bill of exchange had become due, and the holder has neglected to have the protest made in time, the acceptor is discharged, if, and in as far, as he proves to have provided funds at the indicated domicile, saving the obligation mentioned by art. 92.

102. He, who has accepted a bill of exchange, is answerable for the payment thereof.

He may not retract, annul, efface or render illegible the acceptance already put on the bill of exchange, even before it has been returned, and remains notwithstanding answerable for the payment.

He may not prevent the further circulation of the bill of exchange, by means of an attachment levied on the same.

He cannot obtain redress against his acceptance, when even the drawer had provided no funds, or if the latter, unknown to him (the acceptor), had failed before the acceptance, unless the holder have made use of fraudulent means to obtain the acceptance.

103. The acceptance may not be conditional, but it may be limited (1) with respect to the sum. In the first case, the bill of exchange must be protested for non-acceptance; in the second case, the holder is bound to admit the partial acceptance, and must enter a protest for the surplus.

104. If a bill of exchange is protested for non-acceptance, the same can be accepted by another, for the honor of the drawer, or of one of the indorsers, whether they have given him the power to do so or not.

105. If different persons are prepared to accept a bill of exchange for the honor (2) of a third person, they shall be admitted to do so, by preference, in the following order:

1. They, who accept the exchange for the honor of the drawer, or for him for whose account, it is drawn;
2. They, who are prepared to do such for the honor of the drawee;
3. They, who are prepared to do such for the honor of antecedent indorsers.

106. If different persons, all empowered to accept the exchange for the honor of the same person, offer to undertake the acceptance, the holder may choose from among them.

The foregoing likewise applies, if more than one, without authority, offer to undertake the acceptance for the honor of the same person.

107. They, who hold authority to undertake such acceptance for the honor of another from the one for whose account they are prepared to intervene, are always preferent above others, who, without authority, offer to undertake such acceptance for the honor of the same person.

108. The holder himself, being directed or willing to honor the bill of exchange, has an equal right to do so as any other, and may thus, under the same circumstances, give himself the preference.

(1) An acceptance to pay part of the amount for which the bill is drawn, is in legal phraseology a partial acceptance. Bouvier.

(2) Likewise called: *supra* protest or to intervene for another.

109. The acceptance for the honor of another must be written on the bill of exchange; mention must be made of that acceptance in the act or beneath it.

110. Whoever accepts a bill of exchange for the honor of another, is holden to give immediate notice thereof to the one, for whose account he has intervened, under pain of compensation of costs, damages and interests, if cause thereto exist.

111. The holder of the bill of exchange retains all his rights against the drawer and the indorsers, by reason of the non acceptance by the one on whom the exchange was drawn, notwithstanding all acceptances undertaken for the honor of other.

112. A bill of exchange, accepted for the honor of another, must, in default of payment at the time of its maturity, be protested against the drawee.

In default of such protest against the drawee, the acceptor supraprotest is not holden to pay the bill of exchange; and when he has paid the exchange, notwithstanding the absence of this protest, he loses his recourse against all those, who have an interest to have had the bill duly protested against the original drawee.

113. The payment of a bill of exchange, can, independent of the acceptance of the drawee, be more over protected by a guaranty (1) called aval.

114. This guaranty is given on the bill of exchange itself, or by a separate writing, or even by letter.

115. If no other agreements to the contrary exist between parties, the guarantor is bound in entirety in the same way, and can be constrained to make payment by the same remedies, as the drawer and the indorsers.

SECTION THE FOURTH.

Of indorsement of bills of exchange.

116. The property in bills of exchange, payable to order, can, as long as they have not past the time of payment, be transferred to others by means of indorsement.

117. The indorsement must be written on the bill of exchange, and must be dated and subscribed. It must contain the name of the person, to whom, or to whose order payment is to be made, with mention of "value received" or value on account.

If the value is furnished by a third person, mention must be made thereof, with indication of this third person.

118. The indorsement not made conformable to the directions given in the preceding article, is held to be a procuration between the indorser and the one, to whom he has indorsed the bill of exchange, for the object of demanding payment of the same, even by legal proceedings.

(1) For the difference between guaranty and suretyship with respect to commercial law, see Bouvier.

If the indorsement is made to the order of the indorsee, the latter may by indorsement, transfer the property in the bill of exchange, saving his responsibility to his principal.

119. The indorsement can also be made in blank, by the indorser writing his signature only on the bill of exchange. Such indorsement imports the acknowledgement of value received, and transfers to the holder the property in the bill of exchange.

120. A false indorsement does not transfer the property in the bill of exchange, but makes void all posterior indorsements, without prejudice to the action at law which the holder has against all the signers of those indorsements.

Indorsements antecedent to the false one, remain of force.

121. It is forbidden to give to indorsements a date anterior to the time of their execution, under pain of compensation of costs, damages and interests, without prejudice to the public prosecution, if there exists cause of action.

122. Bills of exchange, which are over due, or which are not payable to order, may not be indorsed, but the property (in such bills) must be transferred by a separate act of cession, conformable to the directions of the civil code.

SECTION THE FIFTH.

Of engagements between the drawer and the acceptor, between the holder and the acceptor, and between the holder and the indorsers.

123. Between the drawer and the acceptor of a bill of exchange an act of procuration is formed, by which the latter binds himself to pay the exchange to the holder when it becomes due.

124. If the bill of exchange is drawn for account of a third person, the latter alone is responsible for the same to the acceptor.

125. The drawer is holden to give to the drawee timely notice of the bill of exchange drawn by him, and, in case of omission thereof, he is liable for compensation of costs, incurred by refusal of acceptance or payment on that account.

126. The drawer is reputed to have drawn for his own account, if it does not appear from the bill of exchange, nor from the letter of advice, for whose account the exchange is drawn.

127. The acceptance of a bill of exchange gives to the holder the right to demand payment from the acceptor.

128. If the acceptance is false, every holder can enforce his claim against the drawer and the indorsers.

129. All who have signed, accepted or indorsed a bill of exchange are bound in entirety to guaranty the holder.

130. The provisions relative to the responsibility of the acceptor, are also applicable to the one, who accepts a bill of exchange for the honor of the drawer, drawee or indorser; without prejudice to what has been directed by art. 112.

131. If, after the acceptance of a bill of exchange, the drawer has been obliged to take up the same, on account of non payment by the acceptor, he can institute an action against the latter, as well for the recovery of the funds provided him for the payment of the exchange, as for compensation of damage occasioned by the non performance of his engagement.

SECTION THE SIXTH.

Of maturity and payment of bills of exchange.

132. A bill of exchange, drawn after sight, is payable on the day that it becomes due.

133. A bill of exchange drawn at sight, is payable on presentment.

134. The term expressed in a bill of exchange, which is drawn payable in one or more days, months or at usance after sight, commences to run from the first day following on the one, on which the acceptance or the protest of non-acceptance takes place.

135. By months is understood, as well for bills of exchange drawn at sight or after sight, those computed according to the Gregorian Calendar.

By usance is understood, in respect of all bills of exchange payable within the colony, thirty days, which commence to run, for bills of exchange not drawn at sight, the day after their date.

136. If the payment of a bill of exchange drawn at sight falls on a Sunday, the same is payable on the following day.

137. Bills of exchange are accounted to have become due as soon as the drawee has failed, and can be immediately protested by the holder, at his option, for non payment.

In that case the drawer or indorsers, can, if called upon, defer the payment to the day expressed in the bill of exchange, subject to the guaranty mentioned in article 159.

138. A bill of exchange must be paid in the money expressed therein.

If however such money had no legal currency in the colony, and if the rate is not regulated by the bill of exchange, the payment shall be made in lawful money of the colony, according to the course of exchange at the time of its maturity, and at the place of payment, and in absence of any course of exchange there, then according to that of the commercial place nearest to the place, where the bill of exchange must be paid.

139. If during the time the bill of exchange has to run the coin expressed therein, has been augmented, or diminished in value at the place of payment, by order of superior authority, the payment, or in case of non payment, the respective claims for indemnification against the drawer and indorsers, are regulated according to the provisions of article 1775 and 1776 of the civil code.

140. The drawee, who pays or discounts a bill of exchange before it has become due, is responsible for the validity of the payment.

141. The holder of a bill of exchange cannot be compelled to receive payment before it has become due.

142. The payment of the second, third, fourth, etc. of a bill of exchange is valid, when the second, third, fourth, etc. is so worded, that if one is paid the others are rendered void.

143. Whoever pays a second, third, fourth, etc. of a bill of exchange, without taking up the bill, on which his acceptance is written, is not discharged in respect of a third person, who is holder of his acceptance; without prejudice to his redress against the one, whom he has paid without obligation.

144. If a bill of exchange is drawn in a set of first, second, third, etc., and if the drawee has placed on more than one there of his acceptance, he is bound to pay all the accepted bills at maturity, when presented by different holders; subject to his claim for redress against the one, who has more than once made use of the bill of exchange.

145. In case of the loss of a bill of exchange, the acceptor is not bound to the payment there of, than on satisfactory proof of the right of the one, who claims the payment, likewise subject to his warranty against any future demands to pay again, together with his guaranty.

146. Whoever pays a bill of exchange at maturity, without opposition having been made thereto, is presumed to be duly discharged.

137. He who presents a bill of exchange, which is not indorsed to him, but who can produce written proof, that it was sent to him by the rightful holder for collection, can demand its payment under guaranty, and, in default of payment, can have it protested.

148. The holder of a bill of exchange, who receives the payment, and all the antecedent indorsers, are liable to the one, who has paid the exchange for the validity of all such indorsements.

149. Excepting the case, mentioned in art. 145, the acceptor is not holden to the payment of the bill of exchange, unless the accepted bill of exchange, duly acquitted by the holder, be delivered up to him.

150. If the drawee is willing to pay a part of the amount for which the bill of exchange is drawn, the holder is obliged to receive such partial payment, in discharge, as far as it goes, of the drawer and the indorsers, and to cause a protest to be made for the surplus.

151. In case of the preceding article the payee can however not demand the delivery of such bill of exchange, but must content himself with indorsing on the bill itself the partial payment that has been made, and with an acquittance subscribed by the holder.

152. A protested bill of exchange can be paid by whomsoever for the honor of the drawer, or of one of the indorsers.

The proof of such payment, made for the honor of a third person, shall be inserted in the act of protest itself, or written beneath the same.

153. Whoever pays a bill of exchange for the honor of a third person, becomes subrogated by the payment in the rights of the holder, and is subject to the same liabilities.

He is moreover holden to give immediate notice of the payment to the one, for whom he has intervened, under pain of compensation of costs, damage and interests, if cause thereto exists.

154. If the payment for the honor of a third person is made for account of the drawer, all the indorsers are exonerated.

If it is made for the honor of one of the indorsers, all the succeeding indorsers are exonerated.

155. If different persons offer to pay a bill of exchange for the honor of a third person, the rules shall be followed in respect of acceptances *supra* protest.

156. If the one, on whom the bill of exchange was originally drawn, and against whom it was protested for non-acceptance, offers to make payment, the preference shall be given to him above all others.

SECTION THE SEVENTH.

Of the rights and obligations of the holder, in case of non acceptance or non payment.

157. The holder of a bill of exchange, having presented the same to the drawee for acceptance, is holden, in case of non acceptance, to cause it to be protested.

158. The acceptance of bills of exchange must be asked at the domicile of the drawee, and not at the place where the bill of exchange is made payable.

159. Upon notice of protest, (1) in case of non acceptance, the indorsers and the drawer are respectively bound to guarantee the payment of the bill of exchange at maturity, or to take up the same immediately, with costs of protest and re-exchange.

The guarantor, whether of the drawer, or of the indorser, is only bound in entirety with him, in whose behalf he became guarantor.

160. If the acceptor has failed before the bill of exchange became due, the holder can cause a protest to be entered, and can demand as above guaranty or satisfaction.

161. In default of payment of the bill of exchange on the day when it becomes due, the holder is bound to cause the same, whether accepted or not accepted, to be protested on the following day.

If that day falls on a Sunday, the protest must be made on the ensuing day.

162. Payment of a bill of exchange must be asked, and the protest made at the domicile of drawee.

If the bill of exchange is made payable at another domicile designated, or by another person designated, whether at the same place, or else where, payment must be asked, or the protest made at such domicile or to such person.

(1) Called likewise notice of dishonor.

If the one, who must pay the bill of exchange, is entirely unknown or not to be found, the protest must be made at the post office of the designated place of domicile, and, if no post office is there, to the chief of the local government.

The foregoing is also applicable, if a bill of exchange is made payable at other place than that, where the drawee resides, and if the domicile is not designated where payment must be made.

163. In case of refusal of the drawee, the holder is bound to ask payment of the one, who accepted the bill of exchange for the honor of a third person, or of him, to whom the same, according to its tenor, in case of need, is recommended, for acceptance or payment.

Protest shall be made against each one of them, who refuses payment, which can take place by one and the same act.

164. Protests, for non acceptance and non payment, are made by a notary public, or registrar (1) of the Canton Court, or by a marshal; they must be accompanied by two witnesses.

The protests must contain :

1. A literal copy of the bill of exchange, of the acceptance, of the indorsements, of the guaranty called aval, and of the directions placed thereupon ;
2. Mention that they demanded and did not obtain the acceptance or the payment of the bill of exchange, from the persons, or at the place referred to in the two preceding articles ;
3. Mention of the reason assigned for the non acceptance or non payment ;
4. The requisition to sign the protest and the motives of refusal ;
5. Mention, that the notary public, registrar or marshal has protested, on account of such non acceptance or non payment.

165. The notaries, registrars or marshals are holden, under pain of compensation of costs, damages and interests, to leave copy of the protest and to make mention thereof in the copy ; they must inscribe it, according to the date in a separate register, numbered and signed by the canton judge of that domicile, and moreover, such being required, deliver one or more copies of the protest to parties concerned.

166. The holder of a bill of exchange, protested for non acceptance or non payment, is bound, under pain of compensation of costs, damages and interests, at the latest within five days after the protest, to cause it to be served on the one, from whom he received the bill of exchange ; if both are residing in the same place.

If both do not reside in the same place, the holder is bound, under the same penalty, to send to the one from whom he has received the bill of exchange a copy of the protest, certified by the one who has

(1) Griffier, sometimes called recorder.

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made it, and such at the latest on the first ordinary mail day after the five days above mentioned, and if no regular mail exists, by the first opportunity presenting itself after the said five days.

167. Each indorser is holden, under similar responsibility, at the latest within the same term, to count from the day of the receipt of the protest, to cause the same to be served upon or to send it to the one, from whom he received the bill of exchange, and such in the same manner as directed by the preceding article.

168. The holder of a bill of exchange, protested on account of non payment, is entitled to claim reimbursement from the acceptor, from the drawer, and from all the indorsers, as being each bound in entirety.

He can, at his choice, prosecute them collectively or separately.

If he prosecutes only the drawer, all the indorsers are discharged.

If he prosecutes one of the indorsers the posterior indorsers are discharged.

169. The holder of a bill of exchange, protested for non payment, can likewise reimburse himself by means of reexchange.

Reexchange is a redraft from the holder of a bill of exchange on the drawer, or on one of the indorsers, for the capital sum of the protested bill of exchange with costs, according to the course of exchange at the time of the redraft.

This redraft does not cause the right of prosecution to be lost against any of the other obligors, if the payment has not been made.

170. The reexchange is regulated with respect to the drawer, by the course of exchange at the place, where the bill of exchange was payable, upon the place where it was drawn.

In no case is he holden to pay a higher rate of exchange.

171. With respect to the indorsers the reexchange is regulated by the course of exchange at the place where the bill of exchange was remitted or negotiated by them, upon the place where the reimbursement is made.

172. When there exists between the different places no immediate course of exchange, the reexchange is regulated by the course of exchange between the two nearest places.

173. The redraft is accompanied with the return account. (1)

174. The return account contains the principal sum of the protested bill of exchange, the costs of protest and all other legal charges, as banker's commissions, stamps and postage upon letters.

It states the name of the one on whom the redraft is given, and the rate of exchange at which the same is negotiated.

The correctness hereof is authenticated by a declaration from two merchants.

(1) Return account (retour rekening.)

It is accompanied with the protested bill of exchange and with the protest, or with a certified copy of the same.

In case the redraft is drawn upon one of the indorsers, it is accompanied moreover with a certificate of the course of exchange at the place where the bill was payable, upon the place where it is drawn, or on that where the reimbursement is made.

175. Only one account may be made for one and the same bill of exchange.

This return account is paid by the one indorser to the other respectively, and finally by the drawer.

176. Reexchange may not be cumulated; each indorser is liable only but for one, as also the drawer.

177. Interest on the capital sum of the bill of exchange protested for non payment is due from the day on which the protest was made.

178. Interest on the costs of protest, on reexchange and on other lawful charges, are due from the day on which the judicial summons is served.

179. There is no reexchange due, if the bill is not accompanied with the declarations prescribed by article 174.

180. The holder of a protested bill of exchange, is competent, in case of failure of those, who are liable according to the contract of exchange, to claim from their estates the full reimbursement of what is due to him by each of them in entirety.

If he has received a dividend from one of the estates, the other estates, as well as the other joint obligors who have not failed, are not further discharged than for the amount of such dividend.

181. If however the holder has made voluntarily an accord, either with the drawer or the acceptor, he loses his redress against all the indorsers.

If that accord is made with one of the indorsers, he loses his redress against all posterior indorsers, but in no wise against the preceding ones, nor against the drawer nor against the acceptor.

If the accord is made with the drawer, the acceptor, who received no funds, is discharged from all further liabilities; in the contrary case he remains answerable.

Finally, if the accord has been made voluntarily with an acceptor, who is provided with funds, all further redress against the drawer is thereby extinguished.

182. The holder of a protested bill of exchange has likewise an action at law for indemnity against third persons, for whose account the bill of exchange is drawn, if they have received the value therefor.

183. The holder of a bill of exchange which he has had protested too late, has no claim for reimbursement against the indorsers, and can only charge the acceptor; saving the obligation of the drawer, specified in articles 91 and 92.

184. If a bill of exchange has been remitted so early as to arrive, before it became due, in the hands of the one, to whom it is addressed, and could have been presented by the latter for payment, but nevertheless, by inevitable accident or by superior force, it does not arrive until after the day of its maturity, the same must be presented and protested in default of payment, the day after it is received, if the drawee resides at the same place as the holder.

If the lives elsewhere, or the bill of exchange is made payable at another place of domicile, it must be sent by the first publicly known opportunity, and the holder preserves his right, if the bill of exchange is presented for payment and protested in case of non payment the day after its arrival.

185. The holder of a protested bill of exchange that is missing can demand payment from the drawer, by proving his right and giving guaranty.

SECTION THE EIGHTH.

Of the extinction of obligations arising from bills of exchange.

186. Saving the provisions of the three following articles, the debts arising from bills of exchange are extinguished by all the means of remission, indicated in the civil code, and moreover by the voluntary accord mentioned in article 181 of this code.

187. The obligor in the insolvent estate of a decedent who wishes to compensate another debt by means of a bill of exchange which is overdue, must prove, that he became owner of it in good faith before the failure.

188. With exception of what is stated in the following article, debts arising from bills of exchange are prescribed after ten years, to count from the day on which they were due.

Nevertheless, they who set up this prescription, are holden if required to declare under oath, that they owe nothing more on account of the bill of exchange, and that their heirs or assigns, believe in good faith, that nothing more is due by reason thereof.

189. The action against the indorsers and against the drawer of a bill of exchange protested for non payment, the last mentioned if, and as far as he proves, to have provided funds, is prescribed by the hereafter mentioned intervals.

In respect of bills of exchange drawn out of the colony and payable ;

In one of the West India islands, and in places belonging to the states of America on the Atlantic Ocean between Brazil and North America, twelve month ;

In other than the aforementioned parts of the Continent and the American islands, on the northern and western coasts of Africa until and inclusive of the Cape of Good Hope, and in the African islands situate to the west of that hemisphere, eighteen months ;

In all other parts of the world, two years.

The aforementioned intervals are doubled in time of maritime war. The prescription commences to run against the holder of the bill of exchange, to count from the day on which it became due, and against each of the indorsers from the day on which he has been prosecuted for the payment, or, if no judicial action has taken place, from the day that he has voluntarily paid.

CHAPTER THE SEVENTH.

OF NOTES OF HAND OR PROMISSORY NOTES PAYABLE TO ORDER ; OF INLAND BILLS, AND OF CASHIERS'S AND OTHER PAPER PAYABLE TO BEARER.

SECTION THE FIRST.

Of notes of hand and promissory notes.

190. A note of hand or promissory note to order is a writing dated and signed, by which the maker binds himself to pay at his domicile or that of another in the same place or elsewhere, at a future time unconditionally, the sum therein expressed, to the order of the payee, with acknowledgement of value received or of value on account.

191. All provisions relative to bills of exchange, prescribed in the preceding chapter, and concerning :

Maturity ;

Indorsement ;

Obligations in entirety ;

Guaranty, called aval ;

Protest ;

Rights and obligations of the holder ;

Reexchange, and interests and costs ;

Payment, likewise for the honor of a third person ;

Prescription and other means of extinguishment of debt ;

Are applicable to notes of hand or promissory notes payable to order.

SECTION THE SECOND.

Of inland bill.

(Assignation.) (1)

192. An inland bill is a writing dated and signed, by which the drawer names a person to pay the sum therein expressed to another person designated or to his order, in the same place, where the bill is issued ; without distinction if the acknowledgement for value received or value on account is mentioned therein or not.

The direction contained in the second paragraph of article 83 is likewise applicable to inland bills.

193. If the bill is made payable in other than the place where it is drawn, it is still considered an inland bill, provided no acknowledgement of value received or value on account is mentioned therein.

(1) See Kersteman's *Woordenboek* page 23.

194. Inland bills to order can be indorsed in the same way as bills of exchange.

195. The payment of an inland bill, without specification of time of payment, must be demanded, and in default, the protest for non payment, must be made at the latest within a month after the date, if the person designated to make the payment resides in the same place where the bill is drawn, and at the latest within three months, if the said person resides elsewhere.

196. The inland bill payable at a certain time after sight, must be presented to the person designated, at the latest within a month, or within three months, according to the distinctions made by article 195 in respect of the domicile, in order that it be signed by the said person for seen, with mention of the date.

This visa in itself, without an express acceptance, is not considered as an acceptance.

In case of refusal to put this visa, the bill is protested, as if the payment were refused without it being necessary to protest further for non payment.

197. The inland bill which is due at a specified time, in consequence of the visa, or on account of its contents, is payable in the same manner as bills of exchange of that nature, and in case of non payment must be protested in like manner.

198. The holder of a protested inland bill, must give notice thereof, to the one from whom he has taken it in payment, at the latest within five days after date of the protest.

If both persons are not residing in the same place, the notice is given with the first publicly known opportunity.

199. He is likewise holden, under pain of compensation of costs, damages and interests, to give notice of the protest to the original drawer of the bill, in as far as it has been made or indorsed to order.

If the drawer and the holder do not reside in the same place, the final clause of the preceding article is applicable.

200. The holder, who has neglected to observe what is directed by articles 195, 196, 197 and 198, loses his redress against the one from whom he has received the bill, if he has paid the value; and if he has not paid, he is holden to pay the amount of the bill.

In both cases, the drawer must cede and transfer to the holder the claim which he holds against the person designated to make the payment, for the full amount of the bill, and must provide him at the same time, at his (the holder's) expense, the necessary documental proofs, in order to establish his claim.

If the person, designated to make the payment, was owning nothing, or not so much, as the bill amounts to, the drawer is bound to indemnify the holder.

201. Independent of the redress against the drawer of the inland bill, each holder is only relieviable against the immediate preceding indorser, without recourse on the anterior ones.

202. The action arising from an inland bill, is prescribed in the same manner, as is directed in respect of bills of exchange.

SECTION THE THIRD.

Of cashier's and other paper payable to bearer.

203. Cashier's paper and other paper payable to bearer, must contain the precise date of the original issue.

204. The original signer of cashier's paper or other paper payable to bearer by a third person, whether in the form of an inland bill, or of a note, is responsible to every bearer for the payment, during twenty days, from the day of date, that day however not included.

205. The responsibility of the original signer continues however, if he does not prove, that during the term mentioned in the preceding article, he provided the person on whom the paper was given with funds for its payment in full, and that he has since left those funds with the said person.

206. The original signer, who, in consequence of the preceding directions, is released from all responsibility, is nevertheless bound to furnish the holder, at the latter's cost, with the necessary documents, in order to establish his right against the one, on whom the paper is given.

207. Besides the original signer, whoever has given the said paper in payment, remains holden to the one, from whom it was received, during six days thereafter, the day of issue not included.

208. If he, who has drawn one or more checks or notes upon his cashiers, has since been declared to be in a state of insolvency, the cashier can nevertheless proceed with the payment of such checks or notes from the cash in hands until opposition shall have been made thereto, either by one or more holders of other checks or notes, or by the curators of the estate, or by any other party concerned.

In case of opposition, or if the cashier has not continued the payment, the funds which the cashier has in hands for the drawer who has failed, must remain apart, in order that holders of checks or notes, duly given before the failure, be paid therefrom by preference above other creditors, whether for the whole or proportionally, without distinction of the date of the paper.

209. The holder of a promissory note payable to bearer, is bound to ask payment within six days from the day on which he took such note in payment, that day however not included, and in case of non payment, he must present the said note within a similar term to the person, from whom he has received it, in order for it to be taken up by the said person, the whole under forfeiture of redress against the latter, but without prejudice to his right against the one, who has signed the promissory note.

If the day is named in the promissory note on which it is payable, the term of six days does not commence to run but from the morrow of the day specified for payment.

210. If the last day of any term, mentioned in this chapter, falls on a Sunday, the obligation and responsibility continue to and with the following day.

211. Every action at law against the signers of paper, mentioned in this section, is prescribed by the lapse of ten years, to count from the day of the original issue.

Nevertheless they who set up this prescription, are holden, if required to declare under oath, that they owe nothing more, on account of the said paper, and their heirs or assigns, that they believe in good faith that nothing more is due by reason thereof.

The original signer of the paper mentioned in art. 204 is holden, if required, to declare under oath that during the term prescribed by the preceding article, he provided the person on whom the paper was given, with funds for its payment in full, and that he has since left those funds with the said person; and his heirs or assigns that they in good faith believe this.

CHAPTER THE EIGHTH.

OF RECLAMATION OR REVENDICATION IN

MATTERS OF COMMERCE.

212. If merchandise is sold and delivered, and the purchase sum is not paid in full, the seller, in case of the failure of the purchaser, may demand it back, agreeable to the following directions.

213. The right of revendication cannot be enforced but upon such merchandise, which without intermixture (1) with others, is identically the same as that sold and delivered.

Proof hereof is allowed, though the merchandise was even unpacked, repacked or diminished.

214. Merchandise, sold either on time, or without specification of time, can be revendicated if the goods are yet in transit, whether by land or by water, or if the same in natura are yet in possession of the insolvent (failliet), or if a third person, possesses, or has charge of them for him.

In both cases this revendication can only be made within thirty days, to count from the day, on which the merchandise was deposited with the insolvent (failliet) or with the third person.

215. If the purchaser has paid a part of the purchase money, the seller is holden to reimburse the estate the money received, in case of revendication of the whole amount.

216. If the merchandise sold is only partly found in the estate, the return is made in proportion and in relation to the price of the whole.

217. The seller, who receives back his merchandise, is holden to reimburse the estate of the insolvent, all that is already paid or that is yet due for duties, postage, commission, insurance, gross or general average, and all that has further been done for the preservation of the merchandise.

(1) Otherwise called confusion of goods.

218. If the purchaser has accepted a bill of exchange or other commercial paper for the full amount of the merchandise sold and delivered, no revendication takes place.

If the acceptance is only for a part of the purchase money due, the revendication can take place, provided security be given in behalf of the estate of the insolvent (failliet), for whatever claim may be brought against it, in consequence of the acceptance.

219. If the merchandise revendicated has been taken in pledge by a third person in good faith, the seller retains his right of revendication, but is holden on the other hand to reimburse the one who has advanced the money, the amount of the sum loaned, with interest due and costs.

220. Revendication of merchandise ceases, if the same during the transit is bought by a third person in good faith, upon an invoice or a bill of lading.

Nevertheless, in this case, the original seller can, as long as the purchase money is not paid, demand its settlement in full of what is due to him, from the purchaser, and he is privileged upon the said purchase money, which may never be incorporated in the estate of the insolvent (failliet).

The provisions of the preceding article are also applicable, if the merchandise after having been in possession of the insolvent (failliet), or if another in his behalf, becomes by sale and delivery, made in good faith, the property of a third person.

221. The curators of an insolvent estate are authorised to retain the merchandise revendicated for the estate, provided the seller be paid the purchase sum, which had been agreed upon between him and the insolvent.

222. Merchandise given on commission and being yet in natura in possession of the insolvent commission merchant; or of a third person who possesses or takes charge of the same for the said commission merchant, may be revendicated by the principal, under the obligation stated in art. 217.

Revendication takes place likewise in respect of the purchase sum of goods given on commission and sold and delivered by the commission merchant, in as far as the purchase sum has not been paid before his failure, though even the commission merchant had charged a premission as guaranty for the purchaser, or for the so called *del credere*. (1)

223. The provisions of article 219 are applicable of the merchandise given on commission have been taken in pledge by a third person in good faith.

(1) *Del credere* commission, one under which the agent, in consideration of an additional premium engages to ensure to his principal not only the solvency of the debtor, but the punctual discharge of the debt; and he is liable, in the first instance, without any demand from the debtor. Bouvier.

224. If in the estate of an insolvent are found bills of exchange, commercial or other paper, not yet due, or if due not yet paid and placed in hands of the insolvent merely for collection and to hold the amount thereof at the disposal of the remitter, or to make specially indicated payments therefrom; or if they were specially destined for the payment of bills of exchange drawn on and accepted by the insolvent, or of notes payable at his domicile, the said bills of exchange, commercial and other paper can be revindicated, as long as they are in natura in hands of the insolvent, or with a third person, who possesses or has them in charge for him, without prejudice to the right of the estate to demand security for whatever claims may be made against it in consequence of the acceptance made by the said insolvent.

225. Whether there be even no destination or acceptance, as mentioned in the preceding article, bills of exchange, or commercial or other paper, remitted to the insolvent, can likewise be revindicated, even though one and the other had been charged in an account current, provided the remitter, at the time of the remittance, or thereafter, be not debtor for any sum whatsoever to the insolvent, not including the expenses incurred by the remittance.

226. Excepting the case of failure, merchandise sold without time and not paid for, can be revindicated, according to the directions of article 1171 of the civil code, and with observance of those prescribed by the articles 213, 215, 216, 218 and 219 of this code.

227. The revindication of merchandise ceases, if after having been in possession of the original purchaser or of one acting in his behalf, it is bought by a third person in good faith and the delivery made to him.

If however the purchase sum is not yet paid by the third person, the original seller can demand the money to the amount of his account, provided the demand be made within thirty days from the first delivery.

CHAPTER THE NINTH.

OF ASSURANCE AND INSURANCE IN GENERAL.

228. Assurance or insurance is a contract, whereby the insurer (1), for a premium, undertakes to indemnify the insured against loss, damage, or privation of a prospective benefit, which he may suffer by an uncertain event.

229. Among other things insurance can have for object :

The risks by fire ;

The risks to which agricultural products standing in the fields are exposed;

The life of one or more persons ;

The risks of the sea, and those of slavery ;

(1) Likewise called underwriter.

The risks of carriage by land, and along the coasts ;
Of the two last classes the following book treats.

230. The provisions of the following articles are applicable to all insurance, treated of in this and the second book.

231. The insurer can never be made liable for damage or loss proceeding from any defect, natural decay, or from the property and nature of the thing insured, unless such had been also expressly insured against.

232. The insurer is not holden to indemnity, if he, who had insured for himself, or he, for whose account another had insured, had no interest in the subject insured at the time of the insurance.

233. Every erroneous or false representation, or every suppression of circumstances within the knowledge of the insured, although having taken place in good faith on his part, which are of such a nature, that if the insurer had borne knowledge of the veritable state of the matter, the contract would not have been entered into, or not under the same conditions, makes the insurance void.

234. Excepting the cases provided for by law no double insurance may be made for the same term and for the same risks, in subjects, which are already insured for their full value, and such under pain of nullity of the second insurance.

235. Insurance which exceeds the amount of the value or the interest, is only valid, to the amount of this interest.

If the whole value of the subject is not insured, the insurer is only liable, in case of damage, in proportion of the part insured to that which is not insured.

It is however at the option of the parties to stipulate expressly, that notwithstanding the greater value of the subject insured, the damage which befalls it, shall be compensated to the full amount of the sum insured.

236. The renuntiation made, at the time of the contract of insurance, or during its continuation, of what constitutes the essence of the contract, or of that which is expressly prohibited, is void.

237. Insurance must be contracted by an act in writing, which bears the name of policy.

238. All policies, with exception of those on life insurance, must contain :

1. The day, on which the insurance is completed ;
2. The name of the person, who insures, either for his own, or for the account of another ;
3. A sufficiently clear description of the matter intended to be insured ;
4. The amount of the sum for which is insured ;
5. The risks which the insurer assumes for his account ;
6. The period, at which the risk commences and terminates for account of the insurer ;
7. The premium of insurance ;

8. In general, all circumstances whereof the knowledge can be of real interest for the insurer, and all stipulations made between parties.

The policy must be signed by each insurer.

239. The contract of insurance exists, as soon as the same is complete; the mutual rights and obligations of the insurer and the insured commence from that moment, even before the policy is signed.

The contract implies the obligation for the insurer to sign the policy within the specified time and to deliver the same to the insured.

240. To establish the existence of this contract, written proof is required; however all other means of proof shall be received, if there is a commencement of proof in writing.

Nevertheless if, between the making of the contract and the delivery of the policy, a difference arises in regard of the special stipulations and conditions, the said stipulations and conditions can be established by all means of proof admitted in matters of commerce, with this understanding however, that such matters whose express mention the law requires in certain policies of insurance, under pain of nullity, must be established by written proof.

241. The insurance being completed, the policy must be signed and delivered by the insurer, within twenty four hours after application, unless a longer term be accorded by the law in any particular case.

Omission hereof renders the assurer, liable for the damage arising in consequence thereof.

242. He, who being empowered by another to effect an insurance, takes the same upon him, is accounted to have become the assurer upon the conditions according to direction, and in absence of any direction, on such conditions, as the insurance could have been effected at the place, where he should have executed his power, and, if this place were not indicated, at his own domicile.

243. In case of sale and all transfer of property in subjects insured, the insurance runs for the benefit of the purchaser or new owner, even before delivery, as far as relates to damage incurred, since the benefit of the subject insured is taken by the purchaser, or new proprietor; the whole unless otherwise stipulated between the insurer and the original insured.

If, at the time of the sale or transfer of the property, the purchaser or new proprietor refuses to take upon him the insurance, and if the original insured yet retains an interest in the subject insured, the insurance continues to such extent for his benefit.

244. Insurance can be contracted not only for one's own account, but for that of another, either by virtue of a special or general power of attorney, or without the knowledge of the party concerned agreeable to the following articles.

245. In case insurance is contracted in behalf of a third person, express mention must be made in the policy, if such takes place by virtue of a power of attorney, or without the knowledge of the party concerned.

246. Insurance contracted without power of attorney, and without the knowledge of the party concerned, is void, in case and as far as the same subject had been insured by the said party concerned, or by a third person, duly empowered by him before the time that it was known to the insured, that the insurance had been contracted without his knowledge.

247. If no mention is made in the policy, that the insurance is contracted for account of a third person, the insurer is esteemed to have contracted the same for his own account.

248. Insurance can be made on any subject whatsoever, which can be estimated by money, which is liable to peril, and not excluded by law.

249. Every insurance made on any interest whatever, whereof the damage insured against, existed already at the making of the contract, is void, if the insured, or he who has made the insurance with or without power of attorney, bore knowledge of the existence of the damage.

250. There exists presumption, that the damage was known to have taken place, if the judge, according to circumstances, declares, that since the occurrence of the same, sufficient time has elapsed for the insurer to have been informed thereof.

In case of doubt, the judge can impose on the insured or their attorneys the oath, that they had no knowledge of the damage sustained at the time of the making of the contract.

If this oath is deferred by one party to the other, the same must in all cases be required by the judge.

251. The insurer can always reinsure the subject which he has insured.

252. If the insured by legal notice served upon the insurer releases him from all future liabilities, the former can procure anew insurance upon his interest for the same term and against the same risk.

253. If the value of the subject insured is not specified by the parties in the policy, the same can be established by all manner of proof.

254. If this value is specified in the policy, the judge is nevertheless competent to order the insured to make good by ulterior proof the value specified, in case the insurer alleges reasons, from which a strong presumption arises, that the value specified, is excessive.

The insurer is in all cases competent to prove judicially the excess of the value specified.

255. If however the subject insured has been previously valued by experts, appointed for this purpose by the parties, and, if needs sworn by the judge, the insurer cannot oppose the valuation, unless in case of fraud; the whole subject to the special exceptions made by the law.

256. The insurer is not answerable for loss or damage caused by the fault of the insured himself. He can even retain or claim the premium, if he had already incurred any risk.

257. If different insurances have been made in good faith in respect of the same subject, and by the first the full value is insured, it alone takes effect, and the subsequent insurers are released.

If by the first insurance the full value is not insured, the subsequent insurers are responsible for the overplus, according to the order of time, at which the posterior insurances were completed.

258. If by one and the same policy, though even under different dates, insurance is contracted above the value, the insurers are all liable together for the true value insured, in proportion to the sum for which they subscribed.

The above is also applicable, when different insurances have been contracted on the same day and in respect of the same subject.

259. The insured may not, in the cases mentioned in the two preceding articles, annul a prior insurance in order to make the subsequent insurers liable.

If the insured discharges the antecedent insurers, he shall be accounted to have put himself in their place as insurer for the same amount and in the same order.

If he himself reinsures, the reinsurers are subrogated to him in the same order.

260. It is not considered as an illicit agreement, if after the insurance of a subject for its full value, the party concerned causes the same wholly or partially to be insured anew, under the express condition, that he may not enforce his right against the insurers, except and in as far as he cannot recover the damage on the antecedent ones.

In case of such agreement, the particulars of the former contracts must be fully set forth, under pain of nullity, and the directions of the articles 257 and 258 shall be likewise applicable thereto.

261. In all cases, wherein the contract of insurance is ineffectual or void whether wholly or partly, and if the insured have acted in good faith, the insurer must return the premium whether for the whole, or for such part for which he incurred no risk.

262. If the nullity of the contract proceeds from deceit, fraud or wickedness of the insured, the insurer is entitled to the premium, without prejudice to the public action, if there exists cause of action.

263. Saving the special provisions made in respect of the one or the other kind of insurance, the insured is holden to employ all assiduity and diligence; in order to prevent or to diminish the damage, and he is holden to give notice of it to the insurer, immediately after it has taken place; the whole on pain of compensation of costs, damages and interests, if there exists cause of action.

The expenses incurred by the insured, in order to prevent or diminish the damage are at the charge of the insurer, even if the same, added to the damage incurred, should exceed the amount insured, or if the efforts employed did not avail.

264. The insurer, who has paid the damage of a subject insured, succeeds to all the rights, which the insured, may have against third persons, on account of the said damage; and the insured is answerable for every act, which may be prejudicial to the rights of the insurer against the said third persons.

265. If, during the course of an insurance, the insurer is declared in a state of failure, the insured is competent to demand either the annulment of the contract, or sufficient security, that all obligations of the insurer shall be satisfied in full by the estate.

266. Mutual insurance societies are governed by their agreement and statutes, and in case of insufficiency, according to the principles of law. The prohibition contained in the last clause of art. 269, is specially applicable to these societies (companies.)

CHAPTER THE TENTH.

OF INSURANCE AGAINST THE RISKS OF FIRE, AGAINST THOSE TO WHICH AGRICULTURAL PRODUCTS STANDING IN THE FIELD ARE EXPOSED, AND OF LIFE INSURANCE.

SECTION THE FIRST.

Of insurance against the risks of fire.

267. The fire policy must contain independent of what is mentioned by article 238;

1. The situation and boundaries of the immoveables insured;
2. Their use;
3. The nature and the use of the adjacent buildings, for as far as such can be of influence on the insurance;
4. The value of the subjects insured;
5. The situation and the boundaries of the buildings and places, where the movables insured are secured or deposited.

268. In case of insurance of properties constructed, it must be stipulated that the damage which may occur to the same, will either be indemnified, or that the property, will be repaired or rebuilt at a cost not exceeding the amount insured.

In the first case, the damage is estimated by comparing the value of the building before the disaster, with the value of the ruins, immediately after the fire, and the damage shall then be indemnified with ready money.

In the second case, the insured is holden to rebuild or to repair.

The insurer has the right to see, that the moneys to be paid by him, are veritably applied to that purpose within a given time, if necessary to be determined by the judge, and the judge can even, upon the demand of the insurer, order the insured, if cause thereto exist, to give security to that end.

269. The insurance can be effected for the full value of the subjects insured.

If it is agreed upon to rebuild, the insured shall stipulate, that the expenses required for the reconstruction are to be borne by the insurer.

In case of such stipulation the insurance shall however never exceed three fourth of those expenses.

270. The insurer is responsible for all loss and damage, which the subjects insured have sustained by fire, caused by tempest or any other accident, by fire proper, by negligence or wickedness of his own servants, neighbors, enemies, robbers, and all others howsoever named, in whatever other manner the fire may have arisen, with or without premeditation, customary or unusual, without any exception.

271. The damage which is considered as the result of the fire, is assimilated to that which the fire occasioned, when even it proceeds from fire in adjacent buildings, as for example, injury or diminution of the subject insured by water, or other means employed to stop or extinguish the fire, the loss of any portion thereof by theft or otherwise at the time of the extinction of the fire or of the precautionary measures, likewise the damage, which is occasioned by the total or partial destruction of the subject insured, done by order of superior authority, for the purpose of arresting the progress of the fire.

272. With damage caused by fire shall likewise be assimilated that, which proceeds from an explosion of gunpowder, from the bursting of a steamboiler, from lightning, or the like, though even the explosion bursting or lightning had not occasioned any fire.

273. The liability of the insurer ceases, if another destination is given to a building, whereby it becomes exposed to greater risk from fire, so that, if such had taken place before the insurance, he would either not have insured at all, or would not have done so under the same conditions.

274. The insurer is discharged from the obligation to compensate the damage, if he proves, that the fire was caused by the evident fault or negligence of the insured himself.

275. In case of insurance of movable property and merchandise, in a house, in a store or other depository, the judge can impose the oath on the insured, when the means of proof expressed in the articles 253, 254 and 255 are insufficient.

The damage is estimated according to the value of the property at the time of the fire.

276. If there are no special conditions made in the policy the terms movable property, personal estate (inboedel) household goods,

and house-furniture are to be taken in the sense as described by the fourth section, first chapter of the second book of the civil code. (1)

277. If it is stipulated, by mortgage between the debtor and his creditor, that in case of damage sustained by the property encumbered, whether insured or to be insured, the moneys proceeding from

(1) Note on Art. 276.

Inboedel. There exists different versions of this term as "personal estate", "goods and chattels", household goods" etc., but there is no corresponding technical term in English, and it would perhaps be better to adopt the original word itself.

Meubelen en huisraad.

These terms, as generally translated, would merely denote whatever is added to the interior of a house or apartment for use or convenience. It will however be seen from the translation below, that the term is more extensively employed in art 567 of the Civil Code, and hence the use of the technical term household goods, whilst articles of house furniture is comprehended in the term "stofferings" (house-furniture).

Art. 566 (Civil Code.)

The term inboedel (personal estate) comprises every thing which in manner aforesaid appertains to movables, exclusive of ready money, actions, active debts and other rights mentioned in article 563, merchandise and raw materials, implements of manufactory, trade and husbandry, likewise building materials destined for construction or arising from waste.

Art. 567.

The term meubelen of huisraad (household goods) comprises every thing which according to the preceding article pertains to inboedel (personal estate) exclusive of houses and cattle, carriages with their equipments, jewels, books, and manuscripts, drawings, engravings, pictures, statues, medals, instruments of the arts and of the sciences, and other valuables and rarities, body linen, arms, grain, wine and other provisions.

Art. 568.

The term stofferings (house furniture) comprises only those articles of furniture, destined for the use and ornament of apartments, such as hangings, tapestries, beds, seats, looking glasses, clocks, tables, porcelain and other things of the like nature.

Pictures and statues which form part of the furniture of an apartment are also comprehended in the term, but not collections of pictures, engravings and statues, which are placed in galleries for the exhibition of works of art and particular apartments.

It is the same with porcelain such only, as forms part of the decoration of an apartment, is comprised in the term house-furniture.

Art. 569.

The term a house with all contained in it, comprises every thing, which according to art. 565 is deemed movable property and is found in the house, exclusive of ready money, credits and other rights, for which the titles may be deposited in such house.

the insurance, shall replace the mortgage to the amount of the debt and interests due, the insurer to whom the said condition has been signified is holden to settle with the mortgagee the indemnity due.

278. The condition mentioned in the preceding article does not take effect, unless and as far as the mortgage would have been ranked preferent, if the damage had not taken place.

SECTION THE SECOND.

Of insurance against the risks, to which agricultural products standing in the field are subject.

279. Independent of what is required by art. 238, the policy must express :

1. The situation and boundaries of the lands, whose products are insured ;
2. Their use.

280. The insurance can be made for one or more years.

In default of a specified time the insurance is considered to have been made for a year.

281. The valuation of the damage is ascertained by calculating how much the fruits, if the disaster had not occurred, would have been worth at the time of their reaping or enjoyment, and their value after the disaster. The difference is paid by the insurer as indemnity.

SECTION THE THIRD.

Of life-assurance.

282. The life of a person can be insured in favor of another who has an interest therein during a time to be specified by the agreement, under pain of nullity.

283. The party concerned can contract the insurance, even without the knowledge or without the consent of the person whose life is insured.

284. The policy contains :

1. The day on which the insurance is completed ;
2. The name of the insured ;
3. The name of the person, whose life is insured ;
4. The time when the risk commences and terminates for the insurer ;
5. The amount, for which is insured ;
6. The premium for the insurance.

285. The estimate of the sum and the creation of the conditions of the insurance are entirely left to the option of the parties.

286. If the person whose life is insured, was already dead at the moment of the completion of the contract, the insurance is void, even though the insured could not have borne knowledge of the decease, unless otherwise stipulated.

287. The insurance is void, if he who has insured his life commits suicide, or is punished with death.

288. In this section are not comprised widow's funds, tontines, mutual life insurance companies and similar agreements based upon the chances of life and death, whereto a stake or a certain contribution is required,

CENTRALE BOEKRU

Kon. Inst. v. d. Tropen

AMSTERDAM

BOOK THE SECOND.
OF THE RIGHTS AND THE OBLIGATIONS
ARISING FROM NAVIGATION.

CHAPTER THE FIRST.

OF VESSELS. (1)

289. Vessels are movable property.

Nevertheless the delivery of vessels of a burthen of more than ten tons, cannot take place in whole or in part, otherwise than by the transcription of the act upon the public registers destined for this purpose.

290. If vessels belonging to inhabitants of the colony are out of the colony, and are there delivered to foreigners, the delivery takes place according to the laws and usages of the place where it is effected.

291. In case of judicial sale of vessels, the rules must be followed prescribed by the code of civil procedure.

292. The property in vessels, of a burthen of more than ten tons cannot pass whether the sale be effected in or out of the colony, unless subject to the charges and without prejudice to the rights and privileges, mentioned in articles 293, 294, and 295.

293. The privileged debts arising under the preceding article, which be recovered on the proceeds of vessels, of a burthen of more than ten tons, are those stated in the following order of precedence :

1. Charges for salvage, assistance and pilotage ;
2. Tonnage, beaconage, light, quarantine and other harbor dues ;
3. Wages of ship-keepers and laborers ;
4. The rent of magazines and depositories for the storing of ships appurtenances and ships-furniture ;
5. The wages of the master and the crew ;
6. The furnishment of sails, cordage and other necessities, and the expenses for maintenance or repairs of the ship and appurtenances ;

The moneys advanced or loaned to the master or paid for his account for the service and use of the ship ; likewise the moneys due, as indemnity, for merchandise, which the master was obliged to sell for the payment of the aforesaid debts, and if a bottomry bond is executed for the whole or part of those debts, than for the amount of the same, the bottomry premium not included.

(1) Vessels or ships. These are convertible terms and denote all sort of craft used in navigation.

The debts mentioned above under N^o. 1, 2, 5 and 6 are privileged if they have been contracted on account of the last voyage, viz :

Those mentioned in N^o. 1 and 2, likewise in the last clause of N^o. 6, for as far as they were made during the voyage ;

Those mentioned in N^o. 5 and in the first clause of N^o. 6, for as far as they were made since the day on which the vessel was ready for sea, till that on which the voyage is considered to have terminated.

The voyage is considered to have terminated twenty one days after the arrival of the ship at the place of destination, or within such shorter time as the unloading of the last merchandise or goods has been effected ;

The debts, which are mentioned in N^o. 3 and 4 are privileged, for as far as they were made since the day of the vessel's arrival in port, until that of her sale.

7. The necessary supplies and repairs made to the vessel and to her furniture not comprehended in those mentioned in N^o. 6, during the three last years, to count from the day on which the repairs have been completed ;
8. The claim for the building of the vessel with the interests of the three last years ;
9. Bottomry bonds on the ship, her standing and running rigging and further appurtenances, for the victualling and outfit of the vessel, signed or executed before her departure ; the premium to be paid thereon not included ;
10. Damages and interests due to freighters for failure of delivery or imperfect delivery of the merchandise shipped by them, and those which the goods have sustained by the unfaithfulness or fault of the master and the crew.

294. The debts mentioned in the preceding article, comprised in one and the same number and made in the same port, are concurrent; but if, on the prosecution of the voyage, similar debts are made anew through necessity in other ports, or in the same port, if the vessel after having once left was obliged to put back, the later debts are privileged above the older.

295. After the debts enumerated in art. 293, are likewise privileged on the vessels therein mentioned :

1. The amount of the purchase money remaining unpaid, with the interests for the last ten years ;
2. The amounts for which the vessel has been pledged or hypothecated for ordinary debts with like interests, and that, whether the vessel be put or not in possession of the creditor or of a third person.

The debts mentioned in this article shall not be privileged unless the same have been evidenced by an act bearing a certain date, and inscribed upon the register mentioned in article 239.

The rank of these privileged debts is regulated by the date of inscription.

296. The privilege accorded by the preceding articles is waived, if the vessel transferred to another, has been employed in navigation for sixty days after her departure, under the name and for account of the new owner, without protest from the privileged creditors.

Such protest avails only the creditor, in whose name the same is made.

The preceding provisions are not applicable to the foreign sale mentioned in article 290, in which case the charges, privileges and rights remain of force.

297. In case of judicial sale the judicial expenses are privileged above all other debts.

298. In case of failure or of notorious insolvency (1) of the owner of a vessel of a burthen of more than ten tons, all claims and debts, to the charge of the vessel, are privileged on the proceeds of the vessel above the other creditors in the estate, the preference however not extending to the insurance moneys.

299. The seller of a vessel of a burthen of more than ten tons, is holden to notify the privileged debts to the purchaser by a list subscribed by him.

CHAPTER THE SECOND.

OF OWNERS, PART-OWNERS, AND OF THE SHIP'S HUSBAND.

300. If a ship is owned by two or more persons in common and is employed for mutual benefit, an association results therefrom, whose interests are regulated between the owners of the vessel by majority of votes, in proportion to each one's share.

The smallest share counts for one vote, and the number of votes of each one is fixed by the multiplication of the smallest share.

301. The owner or the part-owner of a vessel, each one in proportion to his share, are liable for the acts and obligations of the master, in every thing relating to the vessel or to the adventure.

This liability ceases in case of abandonment of the vessel and of the freight earned and yet to be earned for the adventure, to which the acts and obligations have reference.

The abandonment takes place by a declaration notarially made.

Each part-owner is released from his liability by a like abandonment of his part in the form as above directed.

(1) Kennelyk onvermogen.

Notorious or legal insolvency. Bouvier.

This term is applicable to debtors who are not traders or merchants, and who have been proceeded against at their own request or invitum. See art. 828 of the code of civil procedure.

If the owner or the part-owners have had their interest in the vessel and freight insured, their claim against the insurer is not included in this abandonment.

302. The owner of a vessel or each part-owner, is nevertheless personally liable in proportion to his share, for all repairs and other expenses, which have been made in behalf of the ship by his special order or by order of the association.

303. Each part-owner is holden to contribute towards the outfit of the ship, in proportion to his share, which is bound and liable therefor.

304. When a ship is in a port of necessity for the purpose of being repaired and the majority of the part-owners are willing to make such repairs, the minority are bound to concur therein, or to cede their shares to the majority, who are bound to pay them the value of said share as estimated by experts.

305. If the majority of the association determine to dissolve the association and to sell the ship, the minority are bound thereby.

The sale must take place in public, unless the owners decide otherwise unanimously.

Nevertheless no association can be dissolved during the course of a voyage.

306. No other than a part-owner can be appointed as ship's husband to the association, unless with unanimous consent of all the part-owners.

The ship's husband can be discharged at discretion.

307. The ship's husband represents the entire association, and can act for the same, either in or out of court, for as far as this power is not restricted by the present code or by special and express conditions inserted in the contract of association.

308. He appoints the master and discharges him at discretion.

If the master has been discharged for lawful reasons, he has no right to indemnity.

If the discharge has been given without lawful reason, before the commencement of the voyage, he is entitled to daily wages during the term of his service, but if the discharge is given during the voyage, he is entitled to full wages with the expenses of the return voyage, the whole unless otherwise stipulated by written agreement.

The foregoing provisions are applicable to the owner and the association of ship owners.

309. If the discharged master is part-owner of the vessel, he can relinquish his share in the ship to the association, and claim payment of the value, to be fixed by experts.

310. The ship's husband has the entire administration of every thing in respect of the maintenance, outfit, victualling and affreightment of the ship.

311. For every fresh voyage or fresh affreightment, the ships husband requires the assent of the part-owners or of the majority of the same, unless a more extended power in respect hereof had been given him by the contract of association.

312. He is answerable to the part-owners for all costs, damages and interests, which they may sustain through his fault or unfaithfulness.

For this compensation the right of privilege attaches to his share in the ship.

313. He cannot without express authority from all the part-owners cause the vessel to be insured.

314. He is bound to cause to be insured the costs of repairs made during the voyage, unless the master has not borrowed on bottomry the funds required for the repairs.

315. He binds by his acts and obligations all the part-owners, in proportion to their shares; but they can alienate their share in the vessel and the freight already earned, or yet to be earned for the adventure, to which the acts and obligations relate, in manner as mentioned in article 301, without being holden to any thing further.

316. All the part-owners are personally bound, in proportion to their shares for any repairs which the ships husband has caused to be made, or any act performed by him, by special order or with previous knowledge of the association.

General expressions contained in the contract of association shall not be considered as implying special order or previous knowledge.

317. He is holden to give to each part-owner, on his demand, every information and explanation in respect of the affairs and circumstances concerning the vessel, the voyage and the outfit; likewise to lay before him all books, papers and letters, and all that relates to his administration.

318. He is holden, after the expiration of every voyage, to render an account of his management to all part-owners, and to each one of them, on his demand, as well in respect of the general condition of the vessel and the association, as about the voyage terminated, and he must lay over all vouchers relative thereto, and make payment of whatever is due them.

319. Every part-owner is on the other hand holden to assist in the examination and adjustment of this account, and to pay his quota of the amount that shall be found to be due to the association.

320. The approval of this administration account by the majority cannot prevent the minority from enforcing their rights.

CHAPTER THE THIRD.

OF THE MASTER.

321. The master is charged with the command of the ship, either for a stipulated hire, or for a part in the gain or in the freight.

322. If one or more of the part-owners should neglect after having been duly notified, to contribute their quota of the necessary expenses for the outfit, the master can, twenty four hours after the service of the notice, and after having obtained the authorization of the High Court, borrow money for their account on their share in the vessel, even on bottomry.

323. The master fixes the complement of the ship's company and selects the officers and mariners in unison with the owner or the ship's husband, when he is present at their place of residence.

324. During the voyage the master may not, without legitimate cause, discharge from service any of the officers or crew.

325. He is obliged to use all diligence, watchfulness and seamanship; and to indemnify the owner all costs, damages and interests occasioned by his unfaithfulness or fault in the exercise of his profession.

He is answerable for all damage sustained by the merchandise during transportation, except such as occurs from natural decay, superior force, or through the fault and negligence of the shipper.

326. He is answerable for all the injuries occasioned by bad or unsuitable stowage or placing of the goods in the ship.

327. Before taking in cargo for a voyage, the master is holden, at the request and expense of each party concerned, to cause his ship to be surveyed by sworn persons of competent skill, appointed for this purpose by the High Court of Justice, and in absence of such court at the place where the ship lies, by the Canton Judge, in order to determine if his vessel be provided with all that is necessary, and if it be in a condition to undertake the voyage.

328. The master is responsible for all damage which may befall the goods which he has laden upon the orlop (1) without the written consent of the charterer.

329. Independent of the personal responsibility of the master to the shipper, the latter has a lien on the ship and the freight earned for the voyage, in case of damage sustained by the cargo through the master's unfaithfulness or fault; the owner or part-owners can enforce their right against the master.

330. The master is holden to sign or to cause to be signed by the mate receipts for all goods laden on board the vessel, with special designation of their number, marks and numero's for the purpose of being exchanged for bills of lading.

331. He must not take on board goods whose packages are visibly defective, injured or in bad condition, without making mention thereof in the receipts and bills of lading; in default of such mention the goods will be considered to have been delivered outwardly, in good order and well conditioned.

(1) Orlop, the deck on which the cables are stowed.

332. The master may not take on board goods for his own account without paying freight for the same, and without having obtained the consent of the owner or the ship's husband, and if the entire vessel is chartered, without consent of the charterers, unless in the first case he be authorized thereto at the time of his appointment, and in the second case, by the charter party.

333. The master who sails a vessel for mutual profit on the cargo, may not take on board goods for his private account, unless otherwise stipulated :

In case of a violation of this prohibition, the goods laden by the master for his private account shall be forfeited to the other parties concerned, independent of the further costs, damages and interests occasioned thereby.

334. When the master is provided with every thing necessary and is ready for sea, he is bound, on the first favorable opportunity, to proceed immediately upon and to accomplish the voyage, to the performance whereof he has bound himself.

335. He may not likewise postpone the voyage on account of sickness of any of the officers or crew, but is holden to replace them immediately.

336. If at the moment that the vessel is ready and ought to sail, the master becomes sick, so that he cannot take charge of the ship, he is bound to appoint an other master in his place, or to cause himself to be succeeded by the mate, provided this can be done without danger to the ship or cargo.

If the owner of the vessel or the ship's husband is at the place of departure the substitution cannot take place but with his consent.

337. The master is bound to have on board of his vessel :

1. The bill of sale or evidence of property in the ship, or an authentic copy duly legalized ;
2. The Register ;
3. The Turkish pass (1), if the nature of the voyage requires it ;
4. The list of the crew ;
5. The manifest of the cargo ;
6. The bills of lading and charter parties ;
7. A copy of the commercial code.

338. The master is bound to keep a log Book or journal, in which must be recorded :

1. The daily state of the wind and weather ;
2. The daily progress or retardation of the ship ;
3. The longitude and latitude of the ship, day by day ;
4. All damage, which has occurred to the ship and cargo (2), and the cause thereof.

(1) Otherwise called a mediterranean pass, or protection against the Barbary powers.

(2) Cargo. This term is employed in its most extensive sense.

5. The state, as far as possible, of that which has been lost by accident, and all that has been broken, carried away, or cut away.
6. The course which he has steered, and the reasons for deviating therefrom, whether voluntary, or from necessity.
7. All decisions taken by the ship's company in council ;
8. The discharge of officers or other persons of the crew ; and the reasons therefor.
9. Whatever is received or expended in respect of the vessel or cargo, and all transactions involving accountability, or pertaining to any demands made or rejected.

The provisions of this article are not applicable to vessels of twenty five tons and less.

339. This Log Book or Journal, wind and weather permitting, must be continued, dated and signed day by day by the master and the mate.

340. The master is bound during the voyage to avail himself of every opportunity to communicate with the owner or with the ship's husband, and to inform him of whatever has befallen the vessel.

341. He is bound to be in person on board of his ship from the moment the voyage commences until he shall have arrived at a secure roadstead or in a safe port.

342. The master may not abandon his ship during the voyage, whatever be the danger, without having taken the advice of the foremost of the crew.

In this case he is bound to take care to save chiefly his Log Book and other ship's papers, the money, and as far as possible the most valuable goods of the cargo, under pain of being personally responsible therefor.

If the goods saved or those remaining on board are lost by any fortuitous circumstance or robbed, without the masters fault, he shall be exempt from all responsibility.

343. He is bound to provide himself with pilots in every place where the law, usage or prudence demands it.

344. If the master is informed, after having entered upon the voyage, that his ship is no longer free, he is bound to put in to the first neutral port, and there to remain until he can sail with convoy, or in any other safe manner, or until he shall have received positive orders to leave, whether from the ship's husband or owner, or from the parties interested in the cargo.

345. In case of capture, seizure or detention of the ship, the master is holden to claim the return of the same with the cargo. He must immediately, by all suitable means, acquaint both the owner or the ship's husband, and the shippers or the consignees of the cargo on board, with the state of his vessel and cargo.

He is bound in the meanwhile, to take those provisional measures which are absolutely required and can bear no delay for the preservation of ship and cargo.

346. In the case, mentioned in the preceding article, the decision taken by the majority of the association is definitive and binds the minority.

If the majority decide not to prosecute the matter, the minority can enforce their right at their own expense, saving the obligation of the majority to contribute towards the costs for as far as they would be benefited by a favorable termination of the reclamation.

347. The master is bound to consult with his owners, shippers or those who represent them, if they are present, and in any case with his officers and the foremost of his crew on every important event whether in making sail, slipping the anchor, cutting away the mast, jettison, the engaging of helpers or lighters, putting into a port of distress, the stranding of the ship, or else wise.

In case of a difference of opinion, that of the master prevails.

348. If goods must be jettisoned, the master is bound to take by preference those, if attainable, which are the least wanted, the weightiest and the least in value; afterwards the goods on the first deck, at his choice, and after taking the advice of the foremost of his crew.

The master is bound to commit to writing, as soon as he can, the deliberation, held in respect thereof.

This writing must contain :

The reasons for making the jettison ;

A statement of the goods damaged or jettisoned ;

The signature of those who have been consulted, or the reasons assigned by them for refusing to sign.

The same shall be inserted in the Log Book.

349. The master is holden, as soon as possible after his arrival at the first port in which the vessel puts into, to make oath before the authority designated by article 360 to the truth of the contents of the aforesaid writing as entered in the Log Book, for as far as the keeping of this journal is obligatory.

350. In case the vessel's port of destination is blockaded, the master is holden, if he has no order to the contrary, to go to one of the neighboring ports belonging to the same power, in which it may be permitted to enter.

In this case, the provision of art. 345 is applicable, except the obligation to make reclamation.

351. If the master is at the place of residence of the owner, or of one of the part owners of the ship, or of their attornies or correspondents, he may not, without their special authorization, cause the ship to be repaired, nor buy sails cordage or other things for the ship, neither may he borrow money for the purpose on the ship, nor freight or hire the same.

352. If during the voyage it should become necessary to make repairs upon the ship, or to purchase sails, cordage or other appurtenances or provisions, or to make other urgent expenses, and the circumstances, or the distance of the place of residence of the owner of the ship or of the cargo, do not permit to await their orders in respect thereof, the master is empowered, after having proved the existence of such necessity by a verbal process signed by the foremost, of his crew, and after having obtained authorization from the consul of the Netherlands, or, in his absence, from the local authority, to make such repairs, purchase or expenses.

If he lacks the necessary funds, and if he is not able to procure them, by means of bills of exchange drawn on the ship's husband or the owners of the vessel, he is empowered with the authorization aforesaid, to take up money upon the ship and appurtenances, and if necessary on the cargo, by way of bottomry, (1) or if this loan cannot be effected in whole or in part, to sell goods to the amount of the sum required.

353. Upon the safe arrival of the ship at the place of destination, the goods which have been sold, shall be valued according to the market price which goods of the same nature and quality bear at the place of destination of the ship, at the time of her arrival.

If the market value is below the price, at which the goods were sold, the benefit shall be for the owners of the goods.

If the ship cannot make her port of destination, the goods shall be valued at the price at which they were sold.

354. If there is lack of stores during the voyage, the master can, after having taken the advice of the foremost of the crew, compel those, who have yet stores of their own, to give them up in common, upon condition of paying their value.

355. The master, who without necessity, shall have taken up money on the ship, her appurtenances or on the stores, who shall have sold or pledged merchandise or stores, or who shall have brought in account false damages or expenses, is responsible by reason thereof to the parties interested.

He is personally holden to reimburse the money loaned or the value of the merchandise, independent of the penal prosecution, if there exists ground of action.

356. The sale of a ship by the master, without a special power from the owner or part-owners, except in case of the unseaworthiness of the ship, is null and void, and the master is moreover personally bound to give indemnity, without prejudice to the penal prosecution, if there exists ground of action.

(1) In the maritime law of England and America, bottomry is a loan on the ship, and respondentia a loan upon the goods, but by the present code (see art. 543) bottomry includes both of these loans.

357. The master is holden before leaving a port of distress, or undertaking the return voyage, to send to the owner of the vessel or to the ship's husband an account signed by him containing a statement of the cargo, the price of the goods laden for account of the vessel, also the expenses incurred for repairs, and of the money borrowed by him, together with the names and places of residence of those from whom he borrowed the money.

358. Before undertaking the voyage mentioned in the preceding article, he may cause to be insured the amount of the goods laden for account of the vessel, or his disbursements for account of the said vessel, provided he gives notice thereof to the owner or the ship's husband, at the time that the account is forwarded.

359. Every master of a vessel of twenty five tons or less is holden, at the latest within thrice twenty four hours after his arrival in port, to exhibit his log book, and to make a report, containing :

1. The place and time of departure ;
2. The route which he has taken ;
3. The dangers, which he has encountered, the disturbances which have taken place on board, and other material circumstances of the voyage.

360. This exhibit and report are made :

- At ports in the colony, to the canton judge ;
- In all other ports, to the competent authority.

361. The master on making this report, at whatever place it may be, is holden to have his Log Book or Journal viséed by the authority before whom the report is made and he is bound to produce the said Log Book or Journal at all times to the interested parties, and to allow them to make copies or extracts therefrom.

362. In all cases, where the master is responsible for the number, the measure or the weight, or has otherwise an interest therein, he may demand that the counting, measuring or weighing take place at the time of the discharge of the goods.

363. In case of shipwreck, of putting into a port of necessity, or of damage, the master must, within twenty four hours after arrival at the first port he puts into, make a report thereof before the public authorities designated in art. 360.

364. All reports, which must serve to substantiate losses sustained, disasters, damages or claims of whatever nature, must be confirmed with oath by those, who have made them, before the competent authority, who may interrogate the master, the officers and the crew, and even the passengers relative to the facts and circumstances.

It is allowed to the parties interested to bring forward proof to the contrary.

365. The provisions of articles 390, of the first clause of article 391, of the articles 394 and 395, are likewise applicable to the master, for as far as the contingencies mentioned therein take place without his aid.

366. The provisions of the articles 392, 393, 397, 398, likewise those of the articles 402 till 414, are also applicable to the master.

367. After the termination of each voyage, the master is holden to give a proper account of his command and management of whatever concerns the ship and cargo, to the owner or ship's husband and to pass over to him against a receipt all the log books, (journals), books, papers and moneys, which relate in any way to such account.

368. The owner or the ship's husband is bound to examine immediately the said account, and finding the same correct, to balance it and pay to the master the amount which may be found to be due to him.

369. If a difference arises in respect of this account, the owner or the ship's husband is bound to pay provisionally to the master his wages or hire as stipulated, under security for the restitution, and subject to the obligation of depositing the log books or journals, books and papers, for the use of all masters, at the registry of the Canton Court (recorder's office).

370. If the master has agreed for a share in the profits, he must be guided, in respect of the payment thereof, by the directions of the law on partnership in commerce.

371. The master has a privilege upon the ship, with her tackling and appurtenances and freight earned for his hire, or monthly wages, likewise for indemnification and passage money.

372. If the master is part-owner of the ship, his shares and the portion of the profit from those shares are bound by privilege for the satisfaction of what is due by him to the association of owners.

373. If the master is sole owner of the ship, he is bound in respect of the shippers or charterers, to comply with all obligations which are imposed upon masters and upon ship-owners.

CHAPTER THE FOURTH.

OF THE ENGAGEMENT OF SHIP'S OFFICERS AND MARINERS AND THEIR RIGHTS AND OBLIGATIONS.

374. The contract between the master and the officers and mariners consists, on the part of the officers, sailors or mariners in the hiring out of their service for the making of one or more sea voyages, each one in his quality, for a stipulated hire, and on the part of the master, to satisfy what is due for this service, either by virtue of the contract or of the law.

375. The articles of agreement between the master and the officer and the crew are evidenced by the muster roll. (1)

In default of a muster roll all other means of legal proof are admissible.

(1) This term includes also what is commonly called in American maritime commerce "shipping articles."

376. The enrollment takes place before the officer, thereto designated by the competent authority.

He is guided in making up the muster-roll by what is prescribed by general ordinances.

377. The master who proceeds to sea with his ship, without the muster roll being previously made and signed, in the cases where this is required, shall forfeit to the owner or to the association a penalty of one hundred guilders, the mate, a penalty of fifty guilders, and each of the other mariners, a penalty equal to one months wages.

378. The reciprocal obligations between the master and the officers and mariners commence from the moment, that the enrollment is made.

379. The enrollment being made, the officers and mariners are bound, upon the order of the master, to repair on board, to put the ship in order and to receive the cargo.

380. No one of the crew may absent him self from on board without leave of the master, or the one who succeeds him.

381. The master, or the one who succeeds him, can demand the aid of the law against those, who refuse to go on board, who absent themselves without permission or refuse to perform their duty until the end of the voyage.

The charges incurred by reason hereof can be deducted from the wages of the offenders, without prejudice to their liability for costs, damages and interests, if there is ground of action.

382. Beyond the stipulated hire of seamen, they must be provided with suitable subsistence during the time of their service.

383. All the officers and mariners are holden to stand by the master in all cases of attack or disaster befalling the ship and cargo.

384. All officers or mariners, who engaged themselves as competent, are responsible for all damages resulting from their incompetency in the discharge of their service.

385. The mate who engages to make the voyage to a port, where he has never been as officer, without having declared this at the time of his enrollment, or who falsely declares to have been there in the said capacity, forfeits the whole of his wages, and is responsible for the damages occasioned to the ship or cargo by his incompetency, without prejudice to the public action, if ground thereto exist.

386. If the master after performing the outward voyage wishes to sail for another port, the mate is holden to make declaration again, before undertaking this voyage, under pain of the same penalty, damages and prosecution, as mentioned in the preceding article.

387. If, in the case of the preceding article, the mate declares that he has never made the voyage as officer to such place, he must however remain in service for the hire stipulated, or if he accepts to make the voyage, his wages shall be augmented in proportion to the prolongation and the nature of the voyage.

388. The master may not, in such case, dismiss his mate from service, unless paying him the full amount of the wages stipulated, and, if he is hired by the month, for the time at which the voyage would in all probability have terminated.

He is moreover holden to compensate him (the mate) for the expenses of the voyage to the place where he was engaged.

The master is not bound to make neither this payment nor the compensation, if the mate, at the time of his engagement, had falsely declared to have made the intended voyage before in the capacity of officer.

389. The officers and the mariners may not load merchandise for their own account without paying freight and without consent from the owners of the ship, or if the whole ship is freighted, from the charterers, unless otherwise stipulated at the time of their engagement or by the charter party.

390. If the voyage is broken up through the fault of the owner, the master or the charterer, the officers and the mariners have the choice, either to keep as indemnity all that has been advanced them upon their wages, or under deduction of these advances, to demand a months hire, or, one fourth of their wages, if they are engaged for the voyage.

In whatever manner they may be engaged, they are entitled to claim their hire for the days they have been employed in the service since the enrollment, calculated in proportion to the hire stipulated.

391. If the suspension of the voyage take place after it has begun, they shall receive as indemnity above and beyond the hire already earned, the double of what is allowed by the preceding article, and the necessary passage money to take them back to the place of departure of the ship, provided however, that the hire earned and the compensation, do not in any case exceed the amount which they would have enjoyed, if the voyage had been entirely accomplished.

The amount of the passage money for officers and the crew, is calculated in proportion to their stipulated hire, and, in case of difference as to the amount, it shall be fixed by the consul of the Netherlands, and in his absence, by the competent authority at the place where the ship lies.

392. The officers and the crew can only recover wages for the time during which they were in service, under deduction of the sums which they may have received in advance, if before the commencement of the voyage, commercial intercourse is prohibited with the place of the vessel's destination, or, if wares for the transportation whereof the vessel is freighted in particular, may not be exported, or if before the voyage is begun, the vessel is seized by order of superior authority.

393. If such prohibition or seizure take place after the voyage is begun, they are entitled to full wages until their discharge, and obtain for their return passage as much as is prescribed by article 391.

394. If the voyage is prolonged through the fault of the master or charterers, or by lying in a port of distress or illegal seizure, or detention, or from other causes, in the interest and for the preservation of ship and cargo, the hire of the officers and mariners, who are engaged for the voyage, must be augmented in proportion to the prolongation.

395. If the officers and mariners are engaged for a share in the profit or freight, no compensation or daily wages is due to them on account of the breaking up, delaying or prolonging of the voyage, occasioned by superior force.

If the breaking up, delay or prolongation of the voyage takes place through the fault of the shippers, the crew are entitled to a part of the compensation allowed to the ship.

This compensation is divided between the owners of the ship and the crew ; in the same proportion as would have taken place in respect of the freight.

If the breaking up, delay or prolongation of the voyage happens through the fault of the master or the owners of the ship, they are bound in equal proportion to indemnify the crew.

396. If the officers and the crew are engaged for more than one voyage, they may at the termination of each voyage, claim their hire for the voyage already ended.

397. In case of capture and confiscation, or of the stranding and wreck of the vessel, with entire loss of ship and cargo, the officers and mariners lose their hire or wages for that voyage.

They are however not bound to return what has been advanced to them on their wages.

398. The officers and mariners are entitled to demand payment of the wages due to them from the proceeds of the wreck or fragments of the ship.

This not being sufficient, or if only merchandise has been saved, the said wages can be recovered upon the freight earned.

399. The officers and mariners who are engaged for a share in the freight, have only a claim upon the freight in proportion to the amount, which the master or freighter receives.

400. In whatever manner the officers or mariners may be hired, they must always be paid for the days, during which they were employed in saving the ship and goods wrecked.

Special alacrity, attended with success, entitles them in this case to an extraordinary compensation on the footing of salvage.

401. Every extraordinary service must be noted in the log book or journal, and gives a claim for an extraordinary compensation.

402. Every seaman, who becomes sick in the course of the voyage, or who is wounded or mutilated in the performance of his duty, or in combat with enemies or pirates, retains still his wages, is entitled to attendance and medical aid, and in case of mutilation, to compensation, in manner as the judge, in case of difference shall deem fit.

403. The expenses for attendance and medical aid, and the compensation, are to the charge of the ship and freight earned, if the sickness, wounding, or mutilation happened in the service of the ship.

The expenses are assessed be way of general average upon the ship with the freights earned, and upon the cargo, if the sickness, wounding or mutilation were occasioned by combat for the defense of the ship.

404. If at the time of the departure of the ship, the sick, wounded or mutilated seaman, is not so far recovered as to be able to proceed on the voyage without danger, the said attendance and medical aid shall continue until his recovery.

The master before leaving is bound to make good the payment of said expenses, and to provide for the support of the sick or wounded seaman.

405. The sick, wounded or mutilated seaman is not only entitled to his wages, during his sickness, but also up to the time when he could have been back to the place from which he came with the vessel, and to a reasonable compensation for the expenses of the return voyage.

406. In the cases, mentioned in the articles 403, 404 and 405, he has no further claim than upon the vessel and the freight earned, or upon the vessel, the freight earned and upon the cargo.

407. If an officer, or other mariner, absents himself from on board without leave, and becomes sick or is wounded or mutilated on shore, the expenses of attendance and medical aid are to his charge.

408. The corpse of a seaman deceased during the voyage, shall be inhumed or put overboard, according to the decision of the master, and at the expense of the ship.

409. The master is holden to take care of the effects left by the deceased seaman on board the ship, and to make an inventory thereof in the presence of two seamen, who together with the master must sign it.

410. Wages are due to the succession of the deceased, according to the following distinctions :

If he has been engaged by the month, to the end of the current month ;

If engaged for the outward and homeward voyage, the half of the wages is due, if he dies on the outward voyage ;

If he dies on the homeward voyage, wages are due in full ;

If the deceased was engaged for a share in the profits or freight, his part is due, if he dies after the voyage is begun.

The wages of seamen, who are killed in the defense of the ship, are due in full for the entire voyage, if the vessel arrive safe in port.

411. The seaman, who is captured on board and made a slave, cannot exact from the master, nor from the owner or charterers the payment of a ransom for his deliverance.

He is entitled to wages up to the day, that he was taken and made a slave.

412. The seaman, who has been captured and made a slave, when sent to sea or on shore in the service of the ship, has a claim upon the ship and the freight for the payment of the whole of his wages, according to the provisions of the articles 397 and 398.

He is also entitled to a compensation for his deliverance, if the ship arrives safely.

413. The owners of the ship are bound to pay this compensation if the seaman was sent to sea or on shore in the service of the ship.

This compensation is due by the owners of the ship and cargo, if he was sent to sea or on shore in the service of both vessel and cargo.

414. The amount of this compensation, the manner of payment and the employment of the money, are fixed by resolution of the Governor.

415. When the master discharges officers or mariners for lawful reasons, he must pay them their wages earned, calculated in proportion to the voyage accomplished up to the day of the discharge, and if the discharge is given before the commencement of the voyage, they shall be paid for the days they have been in service.

416. The following are accounted lawful reasons :

1. Disobedience ;
2. Habitual drunkenness ;
3. Fighting on board ;
4. Suspension of the voyage, permitted by the law, or by compulsion, provided complying with what the law directs in respect thereof ;
5. Absence from on board without leave.

417. Every officer or mariner who can prove that he was dismissed, after his enrollment, without lawful reason, has a claim against the master for compensation of damage.

418. The compensation is fixed as follows :

If the discharge be given before the commencement of the voyage, at one third of the wages, which the discharged seaman would in likelihood have earned by the voyage ;

If the discharge be given during the voyage, at the full amount of the wages, which he would have earned from the moment of his discharge until the termination of the voyage, with the expenses of the return voyage.

The master may not in any of these cases, recover the compensation from the owner or from the association unless he had been authorized by them to make the discharge.

419. The officers and the crew can refuse to perform duty in the following cases :

1. If the master, before proceeding to sea, wishes to depart from the voyage for which they had engaged themselves ;

2. If, before the commencement of the voyage, the kingdom is engaged in a maritime war;
3. If, before the commencement of the voyage, or while the ship is in a port of necessity, there is positive information that the pest or other similar epidemic diseases are raging at the place of destination of the ship;
4. If there is a change of owners for the entire ship, before the commencement of the voyage;
5. If before the commencement of the voyage, the master dies or is discharged by the owners or the ship's husband;
6. If the engagement was made to leave with convoy, and the convoy is not granted.

420. The crew are bound to continue their service even though the voyage should be prolonged, if the master, during the voyage, thinks fit to proceed to another neutral port and there to unlade and relade his ship.

In this case, those who are engaged by the voyage, obtain a proportionate augmentation of wages.

421. The master may not advance to the crew, during the voyage, more than one third part of the wages which are due them.

422. In case of the discharge of seamen during the voyage, the master is bound to pay to each of them whatever amount is due to him.

He can do so by a draft given on the owner or the ship's husband.

The provision contained in the second clause of art. 301 is not applicable in this case.

423. Neither the officers nor the crew may, under any pretext whatsoever, commence a legal process of any kind against the master or the ship, before the termination of the voyage, under pain of forfeiting their full wages.

Nevertheless, when the ship is in port, the officers or the crew can demand their discharge from the consul of the Netherlands, or in default of him, from the local authority, if the master ill treats them, or has withheld from them suitable meat and drink.

424. After the termination of the voyage, the master, the owner or the ship's husband are holden to deliver the effects and the moneys, and to pay the wages due of the seamen deceased or left behind, to their heirs or assigns, and, when these cannot be found immediately, to act therewith in such manner, as is directed by resolution of the Governor in respect thereto.

425. After termination of the voyage, for which the crew were engaged, they are obliged, at the request of the master or the owners, to unlade, to moor, to dismantle, to berth and secure the ship, and further more, to make a report and confirm the same with oath, either separately, or together with the master, within three days after the discharge or the unlading of the ship.

426. After the officers and crew have complied with all what is directed by the preceding article, they must be discharged immediately, and their wages due paid to them, within twenty four hours.

427. If, without lawful reasons, the payment of the wages due to the officers and crew is delayed, the master, ship's husband or owners forfeits for each day's delay, to each of the officers three guilders, and to each of the crew, one guilder and fifty cents.

428. If the delay mentioned in the preceding article is occasioned by the master or the ship's husband, the augmentation of the payments made by reason thereof, may not be carried to the account of the vessel or the association.

429. When a ship is lost, or captured and confiscated, though even no freight be earned or any thing saved, the seamen who return, are nevertheless bound to confirm the statements of the master, or to make faithful declarations themselves, and to confirm the same with oath.

430. The ship and the freight are specially bound for the wages, the indemnities and the passage money.

431. The ship and the freight are responsible to the owner of the cargo, for the damage he has sustained through the fraud or the fault of the officers and the mariners, committed in service, saving the recourse of the owner of the vessel on the master, and the latter's recourse on the seamen, the whole without prejudice to the last clause of art. 384 of the civil code.

The hire or wages of the master, the officers and seamen, are specially bound for the above reclamation.

CHAPTER THE FIFTH.

OF AFFREIGHTMENT AND HIRING OUT OF VESSELS, OF CHARTER-PARTIES AND BILLS OF LADING, AND OF PASSENGERS.

SECTION THE FIRST.

Of the form and subject of the contracts of affreightment and the hiring out (letting to freight) of vessels.

432. Affreightments are made :

1. For the whole or a part of a vessel, for the performance of one or more voyages ;
2. For the general receipt of goods, where the master engages to load and transport as many goods as he thinks proper for any individual, who makes application thereto. (1)

433. When a vessel is chartered in whole or in part for a sea voyage, the affreightment must be made by a written contract, which is called charter party.

(1) Such a vessel is called a general ship.

434. This charter-party must contain :

1. The name and the burden of the ship ;
2. The name of the master ;
3. The names of the letter (1) to freight, and the freighter or shipper ;
4. The place and time agreed upon for the loading and discharge ;
5. The stipulated freight ;
6. The statement, whether the affreightment is made for the whole or a part of the vessel.
7. The indemnity (demurrage) agreed upon, in case of delay.

435. The cabin is not included in the affreightment of the whole ship. The master may however not load merchandise in the cabin, neither for himself nor for others, without permission from the charterer, under pain of compensation of costs, damages and interests.

436. If there is no time appointed by the charter party for the loading and discharge, the same must be terminated in the colony, within fifteen consecutive working days, after the master shall have declared to be ready to receive or discharge cargo.

This term, is fixed for lighters, at three days after their arrival.

Demurrage is due to the master or skipper (2) by those who delay the loading or unloading beyond the time allowed.

Where a part of the cargo of a vessel must be laden or discharged at one place and the other part at another place, the time allowed to load or unload is suspended during the voyage of the vessel from the one to the other place, without that this interval may be taken in account.

437. If the time for loading or unloading is not fixed by the charter-party, the same is regulated, out of the Colony, according to the law or the usage of the place.

438. The letter to freight or the master, who has declared his vessel to be of a greater burthen than she is, is holden to a proportionate deduction of the freight, likewise to compensation of costs, damages and interests.

If the declaration does not differ more than one fortieth part from the veritable tonnage of the ship, the difference is not reckoned.

439. If the time and manner of payment of the freight is not fixed by the charter-party, the freight can be immediately demanded upon the delivery of the goods laden in the ship.

440. Vessels can be let to freight, either by the voyage, or by the month, or in any other way as the parties shall agree upon.

(1) This term is employed in maritime commerce as the correlative of freighter or charterer. Bouvier under charter-party.

(2) Skipper. The master of a small trading or merchant vessel. Webster.

441. The voyage is accounted to have begun, as soon as the vessel has left the place where the lading of the cargo has commenced, or, having left in ballast, where she has taken in ballast.

442. If a vessel is let to freight by the month, and there is no agreement to the contrary, the freight commences to run from the day of departure of the ship, according to the preceding article.

SECTION THE SECOND.

Of the rights and obligations of the letter to freight and the charterer.

443. Where the charterer has not made any use whatsoever of the time allowed him for loading, whether by the charter party or by the law, the letter to freight is entitled :

Either to the indemnity fixed by the charter party for his detention beyond the time allowed, or, such not being fixed, to demand indemnification, to be estimated by experts ;

Or, to consider the contract of affreightment as broken, and to claim from the charterer, the half of the freight stipulated, with average and primage (1) ;

Or, after giving previous notice, to proceed without cargo on the voyage, for which the ship is chartered, and after the same is accomplished to demand from the charterer his full freight earned, and days of demurrage (2), if there have been any.

444. Where the charterer has only made partial use of the time for loading, the letter to freight has the choice :

Either to demand the indemnification mentioned in the preceding article ;

Or, to proceed on the voyage with a portion of the cargo, on the footing of the last clause of the same article.

445. When the vessel has proceeded on the voyage, either with a part of the cargo, or without cargo at all, and if during the voyage any mishap should befall her, whereby expenses are occasioned, which in case of a full laden ship, would have to be borne on the footing of general or gross average, the letter to freight is entitled to claim two thirds of those expenses from the charterer for what has not been laden. (3)

446. If the charterer without having loaded any thing, renounces the contract before the days of demurrage have commenced, the letter to freight, or the master is entitled to half of the freight stipulated by the charter party.

(1) Kaplaken. Primage or hat money.

(2) The extra lay days beyond the lay days are called days of demurrage.

(3) The amount paid by a freighter or charterer for that part of the vessel's capacity which he does not occupy although he has contracted for it, is called dead freight- 3 chitty com : law, 399.

447. Where the letter to freight has the right to leave with a part of the cargo or without cargo, he may for the security of the freight and general average, cause the master to load other merchandise without permission from the charterer.

In this case, the charterer is entitled to the benefit of the freight for this other merchandise, and is released from contribution towards general average for the same.

448. If the charterer loads more goods than has been stipulated for by the charterer party, the letter to freight is entitled to freight on the excess of cargo laden, in proportion to the price stipulated by the charter-party.

449. The letter to freight is liable to the charterer for costs, damages and interests, if, at the time fixed by the contract, he has not got the ship in readiness, or if he does not deliver her in condition for loading immediately.

450. The charterer is holden to deliver to the letter to freight or to the master, within twice twenty four hours after the lading, if there is no agreement to the contrary, all papers and documents required by the law for the transportation of goods.

In default hereof the charterer is bound to make compensation for the costs, damages and interests, and the letter to freight or the master can moreover, according to circumstances, be authorized by the judge to unlade the said goods.

451. When a ship is freighted for the general receipt of goods, the letter to freight or the master can appoint the time during which the ship will be open for the receipt of goods.

After the expiration of this time, the master is holden to leave with the first favorable wind, tide and opportunity, unless he has come to an understanding with the shippers touching a further delay.

452. If a vessel is employed for the general receipt of goods, without the time being appointed during which she will be open to freight, each shipper shall be at liberty to reland his goods, without payment of freight, provided restitution be made of the bills of lading signed by the master, and upon giving satisfactory security for all future demands, in case one or more of the said bills of lading may have already been forwarded, with payment of the expenses incurred for loading and unloading.

If the vessel is however more than half laden the master is bound, eight days after notice, to proceed upon the voyage with the first favorable wind, tide and opportunity, if the majority of the shippers so desire, and in this last case, it shall not be allowed to any shipper to take back his merchandise.

453. If a vessel is detained on her departure, during the voyage or at the place of unlading, through the fault or negligence of the charterer or of one of the shippers, the charterer or such shipper is answerable as well to the letter to freight and the master, as to the further shippers, for the costs, damages and interests occasioned thereby, and for which the merchandise laden is liable.

454. The letter to freight or master is bound to make compensation of costs, damages and interests to the charterer or to the shippers, if through the fault or negligence of the former, the vessel has been arrested or detained on her departure, during the voyage or at the place of unloading.

455. If the letter to freight suffers damage in respect hereof through the fault or negligence of the master, he is entitled to redress from him.

456. If without the knowledge and consent of the master, the charterer or shipper puts on board goods, whereof the importation or exportation is prohibited, or otherwise acts in an illicit manner, without the knowledge and co-operation of the master, at the time of the lading or unloading, he is bound to indemnify the ship and the master and all other interested parties in respect thereof, and, though even the goods have been confiscated, to pay the whole freight and gross average.

457. If the master is compelled to have his ship repaired during the voyage, the charterer or shipper must wait upon such repairs, or he may take back the lading, on paying the full freight and the gross average due, and under the provisions stipulated in article 491.

The charterer or shipper is not holden to pay freight during the time of the repairs, if the vessel is let to freight by the month, nor to an augmentation of freight, if the affreightment is made for the voyage.

If the vessel cannot be repaired, the master is holden to hire for his account, without any claim for augmentation of freight, one or more ships for the purpose of conveying the lading to the place of destination.

If the master has not been able to procure one or more vessels at the locality or at the neighboring place, he is not further entitled to freight than in proportion to the voyage already performed.

In this last case, the care for the further transportation of the goods devolves upon the several shippers; without prejudice to the obligation of the master not only to cause them to be informed of the state of affairs, but to adopt too all necessary measures in the interval for the preservation of the cargo.

The whole, unless otherwise stipulated by the parties.

458. If it is proven that the ship was not in a condition to perform the voyage, at the time of undertaking the same, the charterer is not holden to the payment of freight and is entitled to indemnification.

Such proof is admissible notwithstanding and in opposition to the certificates of survey before the departure.

459. If the master was obliged, in conformity with article 352, to sell goods, the freight on those goods is due for the whole, in case of the safe arrival of the vessel, and in case of the shipwreck of the vessel, in proportion to the voyage performed.

460. Freight is likewise due for goods, which were thrown overboard for the common safety, in as far as the contribution towards bearing in the damage, occasioned by the jettison, must take place according to this code.

461. No freight is due for goods lost by shipwreck, stranding or by other superior force, or captured by pirates or by enemies.

The charterer can even demand, if there is no agreement to the contrary, the restitution of that which has been paid in advance.

462. If the vessel and cargo have been redeemed or ransomed, or if goods, after shipwreck, have been saved, the freight is due, if the voyage could not be accomplished until the place where the ship was captured or wrecked, in proportion to the freight stipulated.

The letter to freight or the master is entitled to the whole freight, if the goods redeemed or ransomed are delivered by the master at the place of destination.

In the cases provided for by the first and second clause of this article, the letter to freight or the master must contribute towards the ransom or salvage on the footing of gross average.

463. No freight is due for goods that belonged to the cargo of a vessel and which have been saved on the sea, or on the coast of the sea, without any cooperation of the master, and afterwards delivered to the parties interested.

464. When the time allowed by the charter party or the law for unloading has expired, the letter to freight or the master has the right to compel the charterer or the consignee of the cargo to take the goods from onboard, upon payment of the freight and average due him.

465. If the lay days have expired, or if any difference arises in respect of the unloading of the vessel, the letter to freight or master may, after obtaining judicial authorization, land the goods and put them in the custody of a person appointed for that purpose, without prejudice to his lien upon the said goods.

466. The letter to freight or the master cannot detain goods on board for the payment of the freight, expenses and general average.

He can exact that they be stored and put in the custody of a third person, until the payment of freight, expenses and gross average, and if the goods be of a perishable nature, he can exact that they be sold.

If the adjustment of a general average cannot be immediately made, he has the right to demand, that in the interval, an equitable sum, to be fixed by the judge, be given in judicial deposit therefor.

467. If the master has unladen the goods without having been paid the freight, average and other expenses, or without having made use of the precautions, allowed by the laws at the place of discharge, he loses his claim against the charterer or shipper, if he proves, that the amount thereof has been settled with the receiver of the goods, or that he cannot obtain back the said amount, in consequence of the failure of this last mentioned party.

468. If the consignee refuses to receive the goods, the letter to freight or the master can, on the authorization of the judge, cause to be sold to the extent of the freight, expenses and average, a part, or if need be, the whole of the goods, provided he have the surplus put in judicial deposit, and saving his redress, in case of insufficiency, against the charterer or master.

469. The letter to freight or the master is privileged for the freight, expenses and average, above all other creditors, upon the goods laden during twenty days after delivery, if the said goods have not passed into the hands of third persons.

470. In all cases where the freight is agreed for according to number, measure or weight, the letter to freight has the right to demand that the counting, measuring or weighing take place immediately on the unloading of the goods.

471. If in the case mentioned in the preceding article, goods are delivered from on board without being counted, measured or weighed, the receiver has the right, to establish the identity, number, weight and measure of said goods, even by means of the evidence of the persons, whom he has employed for the unloading and storing of the same.

472. If there is presumption, that the goods laden are injured, decayed, embezzled (1) or diminished, the master and the consignees or the interested persons, can exact, each for himself, a judicial examination, inspection and valuation of the damage before or at the time of the unloading.

If this demand is made by the master, it shall not operate any prejudice to his means of defense.

473. If the goods are delivered from on board upon a receipt or a receipted bill of lading, in which is certified, that the same have been unladen in an injured, decayed, despoiled or diminished state, the consignee can cause their condition to be certified by a judicial inspection, provided the inspection be asked for within twice twenty four hours after the delivery.

474. If the damage or diminution is not outwardly visible, the judicial inspection can be made with equal force after the goods are under the control of the receiver or the consignee, provided such inspection be made also within twenty four hours after the unloading, and that the identity of the goods be established according to the directions of art. 471, or in any other lawful manner.

475. The letter to freight and the master having complied on their part with the contract of affreightment, the charterer can never demand the diminution of the freight stipulated.

476. The shipper can, in no case, abandon the goods for the freight.

(1) In maritime law, the embezzlement of goods on board of a ship is known by the name of plunderage.

Nevertheless barrels, which were filled with fluids, and have become empty or nearly so from leakage during the voyage, can be abandoned for the freight, average and expenses.

477. If a foreign ship is freighted within the colony, both the master and the ship are subject to the present code ; and if the ship is freighted out of the colony, the master is equally subject to said code, in respect of the unloading of the vessel and in whatever else must be executed within the colony.

478. The judicial authorisation for the unloading, bailment, sale and inspection of the goods, whereof mention is made in this section, is granted by the president of the high court of justice, and at places where the high court is not established, by the canton judge.

SECTION THE THIRD.

Of the dissolution of contracts of affreightment.

479. The contract of affreightment is dissolved by the operation of law, without entitling the parties to claim from each other any freight or indemnity, if one of the following circumstances takes place before the commencement of the voyage.

1. If the departure of the ship is prevented by superior force, without difference if the same is freighted in order to transport a cargo from the colony, or if the ship is out of the colony, and is freighted or let to freight by inhabitants of the colony.
2. If there is prohibition of exportation from the place of departure of the ship, or prohibition of importation at the place of the ship's destination, either of the whole, or part of the goods, mentioned in one and the same charter party ;
3. In case the prohibition concerns only a part of the cargo, the shipper shall be at liberty to cause the contract to be prolonged, provided he indemnifies the letter to freight.
4. If commerce is prohibited with the country, to which the ship is bound.

In all these cases the expenses of lading and unloading are for account of the charterer.

480. The contract of affreightment can be annulled on the demand of one of the parties, if war breaks out before the commencement of the voyage, in consequence of which ship and cargo, or one of the other, can no longer be considered as neutral property.

If both ship and cargo are not free, the charterer and letter to freight cannot claim any indemnity from each other ; and the expenses incurred for lading and unloading, are for account of the charterer.

If the cargo only is not free, the charterer must pay to the letter to freight all the necessary expenses to fit out the vessel for the voyage, likewise the wages and board of the crew up to the day of the demand of annulment, or of the relanding of the goods already laden.

If the vessel only is not free, the letter to freight or the master, must pay all the expenses incurred for lading and unloading.

481. In the cases mentioned in the two preceding articles the letter to freight or the master retains his claim for extra lay days, if there have been any, likewise for gross average on account of damage sustained before the dissolution or annulment of the contract.

482. Where a vessel is let to freight for one or more places of destination, and after having terminated one voyage, she arrives at the place, from whence she ought to proceed on the other voyage, the following directions must be observed, in case a war breaks out before the commencement of the voyage.

1. If both vessel and cargo are not free, the ship must remain lying in port, at longest, until peace is concluded, or until she can leave with convoy, or in any other safe manner, or till the requisite orders are received by the master from the owners of the vessel and cargo.

If the ship is laden, the master is authorized to cause the cargo to be stored in magazines or in other safe places of deposit, until the voyage can be continued, or until other arrangements can be made.

The cost of maintenance and the wages of the crew, the rent of magazines and other expenses occasioned by the detention, are borne by the charterer and letter to freight, in the way of general average.

If the vessel is not yet laden, two thirds of the expenses are for account of the charterers ;

2. If the vessel only is not free, the contract shall be annulled, on the demand of the letter to freight, for the voyage yet to be performed ;

If the vessel is laden, the letter to freight or the master pays the expenses incurred for lading and unlading, and he is only entitled to the freight for the voyage already performed, to demurrage and to general average ;

3. If, to the contrary, the vessel is free and the cargo only is not so, and the charterer does not choose to laden the vessel, the master may leave without cargo, and proceed further on the voyage, for which the vessel is let to freight ; after termination of the voyage the freight stipulated shall be paid in full to the master or to the letter to freight.

With respect to the damage and the expenses for taking in another cargo, and the benefit of the freight resulting therefrom, the provisions of articles 446 and 447 are applicable.

483. When a ship lying within the colony or elsewhere is freighted to proceed in ballast to another place, in order there to be laden for a voyage, if, on her arrival at the place of lading, she is prevented by reason of war from accomplishing the voyage, the contract shall be considered annulled in case the vessel, or both vessel and cargo, are not free, without the mutual parties being entitled to any claim upon each other.

If the cargo only is not free, the parties are reciprocally released by the payment of half of the stipulated freight.

484. If commerce should be forbidden with the country, to which the ship was on her voyage, and the same is thus obliged to return with the cargo, nothing more is due than the freight for the outward voyage, though the ship had been let to freight for the homeward and outward voyage.

485. Where the voyage of a vessel, either before departure, or during the same, is prevented for a time by embargo or by other measure of superior authority, without fault of the master, owner or charterer or by other superior force, the agreements continue effective, without there being any indemnity due on the part of one or the other.

No freight is due by the charterer during the time of the ship's detention in consequence thereof, if the ship is let to freight by the month, nor any augmentation of freight, if the affreightment has been made for the voyage.

The shipper can, during this delay, cause his merchandise, to be unladen at his own cost, on condition of relading the same, or indemnifying the letter to freight or master.

486. All the provisions of this section are applicable to affreightment for the general receipt of goods.

SECTION THE FOURTH.

Of bills of lading.

487. The bill of lading must contain :

1. The name of the charterer, or of the shipper ;
2. The designation of the one to whom the goods are sent ;
3. The name and the residence of the shipper ;
4. The name and the description of the vessel, also the place to which she belongs ;
5. The nature, the quantity, the marks and the numero's of the goods to be shipped ;
6. The place of departure and the destination ;
7. The stipulated freight ;
8. The signature of the master and that of the shipper, or of the one who makes the shipment for him.

488. The bill of lading can be made to order, to bearer or to a person designated.

The bill of lading to order is assignable by endorsement.

489. Of every bill of lading there must be made at least, four originals :

- One for the charterer or shipper ;
- One for the person, to whom the goods are sent ;
- One for the master ;
- One for the owners ;

These four original bills of lading must be signed, and exchanged for the receipts delivered, within twenty four hours after the goods are taken on board.

490. The master is nevertheless holden to give to the charterer or to the shipper as many bills of lading of the same tenor, as he shall require.

491. The charterers or shippers may not reland the goods, than upon restitution of all the bills of lading, which the master has delivered to them in respect thereof.

When one or more of the bills of lading have been forwarded, the unlading can only take place upon judicial authorization, after investigation of affairs, and upon proper security for the shipper for all future demands resulting from the bills of lading forwarded; in all cases upon payment of the full freight of the goods shipped by him and the expenses incurred for the unlading and the stowage again of the other portion of the cargo, the whole saving what is directed by article 452.

The authorization is granted by the president of the High Court of Justice, and where there is no High Court of Justice, by the Canton Judge.

492. The bill of lading, made up in the prescribed form, is conclusive between all the parties interested in the shipment and between those, who have a share in the cargo, and the insurers, saving the competency of the latter to adduce contrary proof.

493. Where the goods laden on board have not been counted, weighed or measured, the master has the right to note on the bill of lading, that the sort, number, weight or measure of said goods are unknown to him.

494. If the master can prove, that his ship could not lade the quantity of goods mentioned in the bill of lading, this proof is valid against the shipper, but the master is still bound to indemnify the consignee, if the latter, relying on the bill of lading, has paid or advanced more to the shipper, than the vessel contained, without prejudice to the master's recourse on the shipper.

495. Where there is a difference between bills of lading for one and the same cargo, the one which is most regular, shall be taken in preference.

496. Where different individuals are each holders of a bill of lading for the same merchandise, the provisional delivery must be made in preference to the one, who is holder of a bill of lading, which stands directly in his name, above him, who has only a bill of lading to order or to bearer.

497. If all the bills of lading for the same merchandise are in the name of their respective holders, or if they are all made to order or to bearer, the judge, designated by art. 491, must decide to which of the parties the provisional delivery must be made.

498. If the master knows, that there is more than one holder of a bill of lading for the same merchandise, or that an attachment has been levied on the merchandise, he may not proceed to the unlading thereof without authorization of the judge referred to in the preceding article.

Under those circumstances, he may demand authorization from the judge to have the merchandise deposited in the custody of such person as the judge shall direct.

499. All interested persons, as well as the appointed depositary, have the right to demand of the judge designated in article 491, the sale of the goods, if they are subject to decay, whether by reason of their nature, or because of the condition in which they are.

The proceeds of the sale, after deduction of the expenses stand in lieu of the merchandise, and must be placed in judicial deposit.

500. No attachment or opposition on the part of third persons, who are not holders of bills of lading, can prevent the holder of a bill of lading from demanding the judicial deposit and sale of the merchandise, saving the right of the person who makes the attachment or the opposition to the proceeds of the sale.

SECTION THE FIFTH.

Of passengers on foreign-sea voyages.

501. Where no agreement has been made with respect to the price for the conveyance of a passenger, the same shall be fixed by the judge, if necessary, after the hearing of experts.

502. If, when the ship is ready to sail, the passenger does not render himself on board, or if he absents himself from the ship without the consent of the master, the latter can proceed on the voyage and exact notwithstanding the full passage money.

503. The passenger may not transfer his right resulting from the agreement to a third person, without consent of the master.

504. If the passenger should die before the commencement of the voyage, the half of the passage-money is only due.

If the expenses of maintenance are included in the price stipulated for the conveyance, the amount of the passage-money, in such case, is fixed by the judge, if necessary, after the hearing of experts.

505. If the voyage of the ship is broken up or interrupted, either before the departure of the ship, or during the voyage, by reason of superior force or from other cause without cooperation of the master or the association of owners, the master and passengers are respectively discharged, without any claim for compensation.

In case of interruption of a voyage commenced, the passengers are holden to pay passage money, according to the voyage performed.

506. If in the case of article 487, the passenger is willing to wait until the repairs are made, no augmentation of passage-money is due by him, but he must in the mean while, care for his own maintenance, or come to an understanding with the master in respect thereof.

507. In the cases, where the agreement is annulled, either before the commencement of the voyage, or during the same, the master has the right to make demand for that which he has already furnished to the passengers, or has disbursed for them.

CENTRALE BOEKWERIJ

Kon. Inst. v. d. Tropen

AMSTERDAM

508. The passengers are bound to comply with the orders of the master, for as far as the same tend to maintain order on board.

509. The master is not bound or even authorized, on the demand or in the interest of a passenger, to touch or tarry at a port during the voyage.

510. The passenger must himself provide for all his wants, unless the contrary is stipulated.

The master is however holden, in case of necessity, to supply him for a reasonable price with the necessary food.

The provision of art. 354 is applicable to the passenger.

511. In case of the decease of a passenger during the voyage, it is left to the decision of the master, either to cause the corpse to be inhumed or to be put over board.

The master must take care of the goods belonging to the deceased passenger, which are on board.

512. The passenger is considered as shipper in respect of the goods which he has on board; for the damage occurring to goods of the passenger, which he has had in his own keeping, the master is only responsible for as far as the damage has been occasioned by his fault or that of the crew.

513. The master has the right of detention and of preference over the goods brought on board by the passenger, for what is due to him for passage-money and expenses of maintenance.

CHAPTER THE SIXTH.

OF DAMAGE OCCASIONED BY COLLISION. (1)

514. If one vessel, through the fault of the master or of his crew runs down or runs against, runs foul of or drifts on another vessel, and thereby damages the same, the entire damage done to the vessel and the goods, must be compensated by the master, whose ship has occasioned the damage.

515. If the collision is occasioned by mutual fault, each bears his own damage.

The masters, are bound to make compensation to the owners of the vessel and the merchandise in the cases provided for by this and the preceding article, independent of their recourse against the officers and the crew, if there is ground of action.

516. When the collision is occasioned by mere accident, each ship and cargo must bear their own damage, saving what is directed by article 520.

517. The provision of the preceding article is also applicable in case, that one of the two ships may not be laden.

(1) The rule of the road at sea for the prevention of collisions enacted in England in 1862, has also been adopted by the Netherlands.

518. When neither the fault nor the accident can be proven, and the cause of the collision is therefore doubtfull, the damage sustained by the ships or the merchandise must be aggregated, and borne by each in proportion to the respective value of the different vessels and cargoes.

The amount which each ship and cargo must bear in the aggregate damage is assessed on each porticular ship and cargo, in proportion to their value.

519. If after the collision, a ship is lost on the route or course, which she was obliged to take to gain a port of necessity for the purpose of having the damage repaired, the presumption arises, that the loss is occasioned by collision.

520. If a vessel under sail or adrift, damages another vessel, which is lying at anchor or is made fast in a proper berth, by running against, drifting on or falling foul of the same, and such takes place without the fault of the master or the crew of the vessel which occasions the collision, the vessel which was under sail or adrift shall bear half of the damage, which it has done to the vessel secured and to her cargo, without the latter vessel having to bear in the damage of the other or of her cargo.

This compensation is assessed by way of general average on the vessel and the cargo.

There lies no action for the recovery of the moiety of the damage, if the master of the vessel secured could have prevented or lessened the damage without any danger to himself, by paying out the cable or cutting away the fasts, and if he has not done so, after having been thereto requested in time by or on the part of the master of the vessel occasioning the collision.

521. If a vessel gets adrift, and is driven upon the cables of a vessel lying near at anchor, and if the master of the first mentioned vessel cuts the cables of the other, whereby the same becomes detached from her anchors, and has been damaged, or has suffered shipwreck immediately, the vessel which was adrift is responsible for the whole damage occasioned to the other vessel and her cargo.

522. Where vessels, lying at anchor or side by side in a port, damage by concussion or chafing vessels lying near, occasioned by flood tide or the turbulence of the water, or by storm or other casualty caused by superior force, the damage must be borne as particular average by the damaged ship.

523. If a vessel runs aground and cannot be got off, the master has the right to demand in time of danger, that the vessel lying near weigh anchor, or if necessary, cut her cables, and make way, provided that the adjacent vessel, without exposing herself to danger, can do so, and that compensation be made for the damage occasioned by complying with said demand.

The master of the adjacent vessel, who in this case, refuses or neglects to comply with the said demand, must bear the damage, occasioned thereby.

524. All masters, whose ships are at anchor are responsible for the whole damage, occasioned by neglecting to place a buoy or float to their anchors, unless they can prove, that the same were lost without their fault, and that they could not replace them.

CHAPTER THE SEVENTH.

OF SHIPWRECK, STRANDING AND GOODS FOUND ON THE SEA.

525. It is not permitted to any one to come on board of a vessel, without express consent of the master, or of the one who commands in his stead, though even under pretext of wishing to render assistance or to effect salvage.

526. Vessels stranded or wrecked on outlying banks or goods found on the sea or on outlying banks, may not be saved or rescued by any one, unless having permission thereto from the master, or from the one, who commands in his stead, if one or the other is there present.

527. When the master, the commander, the owner of the cargo or the consignee is present, the said vessels and goods must be left to their direction, and delivered up immediately by the salvors, provided that sufficient security be given for the salvage.

528. Those who detain the vessels or goods stranded, saved or rescued, or who do not comply immediately with the demand of the master, of the commander, of the consignees, or of the owners of the cargo, to deliver to them the said effects upon sufficient security, forfeit all claim for salvage or compensation for assistance rendered, and are liable moreover for the damages caused by such detention.

529. The expenses or freight, for the transportation of the goods from the place at which they were saved to that of their destination, in the case mentioned in the preceeding articles are paid by those, who receive the said goods, without prejudice to their remedy for redress, if there is ground of action.

530. If vessels or goods have been saved or found at sea or on the outlying banks, without the master, the commander, the owner of the cargo or the consignee being there present, or without these persons being known to the salvors, the said property must be transported as soon as possible, to the place nearest to that where the salvage was effected, and placed in hands of the functionary charged by the Governor with the direction of the same, and in default of such person, then in hands of the local administration.

In case of contravention, the salvors forfeit all claim for salvage or compensation for assistance, and are holden to give indemnity, without prejudice to the penal action, if ground thereto exist.

531. Vessels stranded and wrecked, or goods found on or near the main coast, in the absence of the master, commander, owner of the cargo or consignee, or if they have made no other disposition, must be saved and secured exclusively by or in presence of the func-

tionary appointed for this purpose, (1) and in his default, under direction of the local administration in whose jurisdiction the stranding and the finding of the goods have taken place.

Nevertheless if, in the case of this article, it is not clearly proven, to whom the effects saved or found belong, or if there exists a difference in respect thereof, whether by reason of the confusion of the goods or from any other cause, the aforesaid functionary or the local administration, shall be exclusively charged with the direction and the preservation of the same.

532. In the cases, wherein the said functionary, or in his default, the local administration, is charged with the direction of the effects stranded, saved or found, they are bound to make a proper inventory thereof, and stand in respect of the delivery of the effects under the same obligation as the salvors, who saved the vessels and goods at sea or on the outlying banks. They receive for their direction such compensation, as is fixed by resolution of the Governor.

The masters or owners of the vessels or goods stand reciprocally towards said functionaries or the local administration under the same obligation, in respect of the charge for salvage services, as towards other persons claiming as salvors.

533. The said functionaries are holden to send as soon as possible to the Governor, a report of all the aforementioned cases, which have occurred within their jurisdiction, and of the measures taken by them in respect thereof.

534. They must cause to be sold without delay publicly and according to local usage such goods as have not been claimed, and which either by reason of their damaged state, or from their nature, are liable to speedy decay, or whose storage is indubitably contrary to the interest of the owner.

535. They shall immediately advertise the goods saved in one of the news papers of the colony, with mention of their marks and distinguishing characters, at the same time calling in all persons, who consider themselves entitled to said goods.

The advertisements must be repeated four times from month to month.

Nevertheless, where the trifling value of the goods makes this advisable, the advertisements can be provisionally deferred with permission of the Governor, in order to be made afterwards in one with those in respect of other goods.

536. If the right to the property saved is established by bills of lading or other valid documents, the said functionaries shall deliver the same to the rightful claimants upon payment of the salvage and the expenses.

(1) By resolution of the Governor of Curaçao dated 16 May 1871. Publication sheet 1871 N°. 9 the officer of the Public Ministry of the Canton Court at each island is appointed for the above purpose.

In case of doubt as to the right of the claimant, or of opposition from third persons, or in case of difference touching the salvage and expenses, the parties must be directed to proceed according to the usual course of law, and the judge may, in the last case, order the delivery of the goods, provided sufficient security be given.

When the effects have been saved and administered by the local administration, the same is bound to conform with whatever is directed by this and the preceding articles, with respect to the said functionaries.

537. If after the four advertisements no one comes forward to claim the property saved or found, the same shall be sold in public, and the proceeds thereof, after deduction of the salvage and the expenses, must be accounted for to the Governor, and provisionally deposited in the consignment cash. (1)

The approval of this account cannot prejudice the right, which interested persons wish to advance against the same.

538. When, within the term of ten years, a person proves to have been the owner of the property saved, the proceeds shall be delivered to him.

If no claimant comes forward within that delay, the said proceeds shall be considered as vacant property.

Enemies' property which has been confiscated, can never be reclaimed.

539. No charge for storage (strandregt) shall ever be imposed on vessels or goods stranded or rescued.

This provision does not derogate from the right to confiscate vessels or goods stranded belonging to the enemy.

540. For the service rendered to vessels or goods, rescued from peril, is due compensation for assistance or salvage.

541. Compensation for assistance is allowed, when by the assistance or aid rendered, the vessels and their cargoes, whether together or after the said vessels have been discharged or lightened, are brought again in the open sea or to a port of safety.

This compensation is estimated according to the promptitude with which the assistance was rendered on the discovery of the first danger; by the time employed for the service; by the number of persons who were necessarily employed for that object; by the nature of the service performed in respect thereof; and finally by the peril incurred thereby.

542. The cases, in which salvage is allowed, are :

When vessels or goods are found abandoned, either at sea or on the coast, and are saved or recovered as derelicts ;

(1) See colonial ordinance of the 16 Sept. 1875 P. S. No. 14.

When goods are saved from vessels, which have been cast on the breakers or on the shore, and are in such danger, that they can no longer be considered as a place of safety for the goods, or as affording security for the preservation of the crew ;

When goods have been rescued from vessels actually destroyed ;

Finally, when vessels on account of the danger in which they are in, or when conferring no security for self-preservation, are abandoned by the crew, or where the vessels, after the crew have been rescued, are taken possession of by salvors, and either wholly or partly have been brought to a port of safety.

543. In fixing the rate of the salvage regard must be had not only to the circumstances mentioned in the second clause of art. 541, but also to the peril from which the property was saved, likewise to the value of the same, to be estimated by experts.

544. The rate of compensation for assistance and salvage and the appointment of experts, take place, in case of controversy, by the competent judge.

545. When a ship is abandoned by the master and the crew, and taken possession of by salvors, it shall nevertheless always remain free with the master or the commander to return to his vessel and reassume the control of the same ; in which case the salvors shall immediately, under forfeiture of their salvage, and liability in damages, give over the control to the master, without prejudice to their already acquired claim for salvage.

546. If vessels or goods which have been saved, and delivered upon security, at the place where the salvage is effected, are lost between the place of salvage and that of their destination, without their value, for the purpose of fixing the rate of salvage, having been ascertained, a fair appraisalment shall be made by experts, according to what the vessels and goods saved would probably have been worth at the place where the delivery was made.

547. The cognisance of controversies in respect of compensation for assistance and salvage, is as follows :

If the vessel is bound to a port in the colony, by the judge at the place of destination ;

If the vessel is bound from the colony to a place elsewhere, by the judge of the place, where the vessel has taken on board the first goods, or from where the vessel left in ballast ; or by the judge at the place of residence of the debtor at the option of the plaintiff.

If the vessel, without being destined for the Colony, happens to arrive there, by the judge of the place, where the vessel has stranded or has been conveyed, or if the vessel is lost, by the judge of the place where the goods have been saved.

If the master has changed the destination of such vessel to any port or place within the colony, the above provision, in respect of vessels bound hither, is applicable.

548. All stipulations or agreements in respect of compensation for assistance or salvage, whether made at sea, or at the time of the stranding, with the masters, commanders or owners touching the vessels or goods imperilled, can be modified or annulled by the judge.

Nevertheless, after the danger is over, each one shall be at liberty to make an amicable arrangement or agreement in respect of the salvage or the compensation for assistance. Such agreements are however not binding on owners, consignees or insurers, if they have not given their consent thereto.

CHAPTER THE EIGHTH.

OF BOTTOMRY.

549. Bottomry is a contract between a lender and a borrower of money, by which a sum of money is advanced, in consideration of premium, on security of the vessel or cargo, or of both, to that effect, that, in case of loss or partial loss of the property secured, by perils of the sea, the lender loses his right to the moneys advanced and to the premium, for as far as the one and the other cannot be recovered upon whatever survives, and if the property bound arrive in good safety at the place designated, he shall be reimbursed the principal sum as well as the premium.

550. The contract of bottomry must be made in writing ;

It contains :

The name of the lender and of the borrower ;

The amount loaned, and the premium agreed upon to be paid on account of the marine risks ;

The subject which is specially bound for the loan ;

The names of the vessel and of her master ;

Whether the loan is made for one or more voyages, or specific voyage and for what space of time ;

The period of repayment of the money advanced ;

The place and the date, where and when the bottomry bond is made.

551. All loans on bottomry must be inscribed within eight days after their execution, at the office of records of the Canton Court, under whose jurisdiction they have been contracted.

552. In case of nonfeasance of what is directed by the two preceding articles, the contract shall not be considered as a bottomry loan, and in this case, the borrower, shall only be personally responsible to the lender for the Capital sum with the lawful interests.

553. All bottomry bonds, if made to order, can be transferred to third persons by means of indorsement in the same form as bills of exchange.

In this case the indorsee takes the place of the indorser, as well in respect of the profits as of the losses, without the indorser being holden to any further or other guaranty, than that of the existence of the bottomry.

554. Loans on bottomry can be made, on security.

Of the bottom or keel of the vessel ;

Of the tackle and further apparel ;

Of the armament and the stores ;

Of the cargo ;

Of all these subjects collectively, or of each separately ;

Of a certain portion of each of the same ;

Of the freight and the anticipated profits, provided the provisions of art. 558 be observed.

555. If bottomry is contracted upon the vessel, without further designation, the tackle and further apparel, likewise the armament is included therein.

556. Every loan on bottomry, made for a sum exceeding the value of the subjects made liable for the sum advanced, can be declared void, at the request of the lender, if it is proved, that fraud has taken place on the part of the borrower.

If no fraud has taken place, the contract is valid to the amount of the subjects made liable for the sum advanced ; the surplus of the sum taken up must be returned with the lawful interest.

557. No money may be advanced on bottomry to sailors or mariners upon the credit of their wages or passage money.

558. No loan on bottomry may be effected solely on freight yet to be earned, or solely on the anticipated profits, or exclusively on both of said subjects together.

In these cases or in that of the preceding article, the lender can only claim the return of the principal, without interest.

559. A loan on bottomry effected by the master in the colony, without written consent of the owners there established, or out of the colony, without having conformed with the formalities prescribed by article 352, gives no claim to privilege than upon the share which the master may have in the property bound.

560. The shares of the owners, who after due judicial notice, have not furnished their quota for the equipment of the vessel, are likewise liable for the loans, for the repairs or for the purchase of stores, even though the said loans were contracted at the domicile of the delinquents, without their consent.

561. The moneys taken up in behalf of the last voyage are paid by preference above the debt for the purchase money remaining unpaid, and above moneys loaned for a preceding voyage.

Moneys loaned through necessity by the master during and for the purposes of the voyage, are privileged above those, which were taken up before the departure of the ship, and if there are different loans made by him during the same voyage, the last loan is always privileged above the preceding one.

Loans on bottomry, contracted during the same voyage, in the same port of distress, during the same delay, are concurrent.

562. The lender by way of bottomry on merchandise laden in a vessel designated in the contract, does not bear the loss of the merchandise, if they have even been lost by perils of the sea, if the said merchandise was transshipped on board of another vessel, unless it is proved, that the said transshipment was occasioned by superior force.

563. In case of bottomry upon merchandise before the commencement of the voyage, mention must be made thereof on the bills of lading and on the manifests, with designation of the person to whom the master must give information of his safe arrival at the ports of discharge.

In default of said person the consignee, who accepted bills of exchange or advanced moneys, on the faith of the bill of lading received, is preferred above the holder of the bottomry bond.

The master, being ignorant of the person to whom he must notify his arrival, can also in default of the designation above required, cause the goods to be unladen, without making himself in any wise liable to the holder of the bottomry bond.

564. Whoever fraudulently unlades goods encumbered with bottomry, to the prejudice of the holder of a bottomry bond, renders himself thereby liable for the satisfaction of the bottomry.

565. Where the contract of bottomry contains no specific conditions, the maritime peril commences to run for the lender :

In regard of the vessel, and her tackle, armament and stores, from the moment that she sets sail, and terminates at the moment when the vessel is anchored or moored at the place of her destination ;

In respect of the goods, the risk commences as soon as they have been laden on board of the ship or in the vessels, which are employed for the conveyance of the said goods on board, and from the day on which the contract is concluded, if the bottomry on goods already laden is contracted during the voyage.

In the two last cases the peril terminates as soon as the goods have been or ought to have been discharged at the place of destination.

566. If after executing a bottomry contract, the voyage for which the vessel and goods are bound does not take place, the lender can demand back by privilege the capital and lawful interests, without premium, unless the peril has already commenced to run for his account pursuant to the preceding article, in which case he is entitled to the premium.

567. The borrower is personally responsible for the capital and the premium, when by his act or with his consent the voyage has been changed, or when the vessel or the merchandise pledged has deteriorated, worsened or perished by naturel decay, or by his instrumentality, fraud, wilfulness or negligence of the borrower.

568. The return of the sum loaned cannot be demanded, if the subjects upon which the bottomry is contracted are entirely lost or have been captured and confiscated, provided the loss or the capture has taken place by a fortuitous circumstance or superior force, during the time and on the voyage for which the money was advanced.

If a part of the subjects on which the bottomry is secured is saved, the lender can enforce his claim thereon, but not beyond the same.

569. Bottomry contracted from necessity bears no other average than the damage which proceeds from the loss or diminution in accordance with art. 549, unless the contrary is expressly stipulated.

570. If the vessel or the merchandise upon which bottomry has been contracted, sustains any disaster, or is captured, the borrower must as soon as he is aware of this, give notice thereof to the lender.

Independent of the obligations of the master described in the third chapter of this book, the borrower, if he is at hand, must use all diligence to save the subject incumbered with bottomry, at the expense of the same; in case of non performance in both cases, he is holden to make compensation.

571. Whoever in case of stranding or wreck of a vessel incumbered with bottomry pays debts, which are preferent to those of a bottomry holden, becomes subrogated by virtue of the law to the privilege of the original creditor.

CHAPTER THE NINTH.

OF INSURANCE AGAINST THE RISKS OF THE

SEA AND OF SLAVERY.

SECTION THE FIRST.

Of the form and subject of the contract of insurance.

572. Independent of the requirements, stated in article 238, the policy must contain :

1. The name of the master, that of the vessel, with designation of her sort, and in case of insurance, the declaration whether the same is built of wood of the fir tree, or the statement that the insured is not connusant of this circumstance;
2. The place where the goods are laden, or must be laden ;
3. The port, from whence the vessel ought to have left or must leave ;
4. The ports or road-steads of lading and discharge ;
5. Those, at which the vessel must put in ;
6. The place, from whence the risk commences to run for account of the insurer ;
7. The value of the insured vessel. The whole saving the exceptions, mentioned in the present chapter.

573. Marine insurance has specially for its subject :

The body and keel of the ship empty or laden, armed or not armed navigating alone or in company with others ;

The rigging and tackle ;

The armament, stores, and in general all what the ship has cost until her departure ;

The moneys advanced on bottomry and the premium ;

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The goods which have been laden ;

The expected profits ;

The freight to be earned ;

The risk of slavery ;

The insurance of a vessel, without further description, includes the body and the keel, the rigging and tackle and the armament.

574. Insurance can be effected on the whole or on a part of the subjects, conjointly or separately ;

In time of peace or in time of war, before or during the voyage of the vessel ;

For the outward and homeward voyage, for one of the two, for the entire voyage or for a specified time ;

For all perils of the sea ;

On good or bad news.

575. Where the insured is not informed in which ship goods expected will be laden, the designation of the master or the vessel shall not be required, provided that the ignorance of the insured in respect thereof be inserted in the policy, as well as mention of the date and the signer of the last letter of advice or instruction.

In this manner, the interest of the insured can only be insured for a specified time.

576. Where the insured is not informed of what the goods consist, which are sent or consigned to him, he can cause them to be insured under the general description of " goods."

This insurance does not include coined gold or silver, gold or silver ingots (bars), gems pearls or jewelry, and munitions of war.

577. Where the insurance is made on vessels or goods, which, at the time of making the policy, had already arrived in safety at the place of destination, or on any interest, whereof the damage insured against existed already at the aforesaid time, the rules of art. 249 and 250 shall be applicable to those cases, if it is proved or if there exists presumption. that the insurer bore knowledge of the safe arrival, or that the insured or his mandatory bore knowledge of the existence of the damage, at the time of making the contract.

578. The presumption mentioned in art. 250 does not exist in regard of the insured, if the insurance is made on good or bad news, provided that in this case mention be made in the policy of the last intelligence, which the insured has received in respect of the subject, insured, and if the insurance is made for account of a third person, provided that in case of damage, the date of the mandate which the mandatory has received for making the insurance be duly established.

With this stipulation the insurance can only then be annulled, if it is proved, that the insured or his mandatory bore knowledge of the damage sustained, at the time of concluding the contract.

579. Insurances are void, when they are made :

1. On the hire or wages of the crew ;

2. On the premium or the primage of the master ;
3. On vessels or goods, antecedently bound by bottomry for their full value ;
4. On things, in which traffic is prohibited according to the laws and ordinances ;
5. On the vessels, which are employed for the transportation of the things mentioned in N^o. 4.

580. If vessels or goods are not bound by bottomry for their full value, the overplus likewise the average contribution which must be paid in case of safe arrival, can only be ensured.

581. Where the overplus of things bound in part by bottomry is also insured, the amount of what has been saved, in case of abandonment to the insurer, shall be divided between the lender on bottomry and the insurer in proportion to their reciprocal interests.

If however, in this case, bottomry has been contracted through necessity the bottomry loan has precedency above insurance.

582. Insurance on the body or keel of the vessel can be made for the entire value of the vessel, together with all appertaining to the same, and all expenses, until putting to sea.

583. Insurance can be effected on vessels which have already left or on goods which have been transported from the place, from whence the risk must commence to run for account of the insurer, provided that mention be made in the policy, either of the precise time of the departure of the ship or of the transportation of the goods, or of the ignorance of the insured in respect thereof.

In every case, the policy must state, under pain of nullity, the last intelligence which the insured has received concerning the ship or the goods, and, if the insurance is made for account of a third person, the date of the letter of instruction or advice, or the express statement, that the insurance has been made without mandate from the party concerned.

584. If the insured makes in the policy the declaration of ignorance mentioned in the preceding article, and it afterwards appears, that the insurance was contracted after the vessels had left the place, from whence the risks must commence to run for account of the insurer, the insured must, in case of damage, confirm with oath his declaration of ignorance on the demand of the insurer.

585. If in the policy, no mention is made either of the departure of the vessel or of the ignorance in respect thereto, this shall be considered as an acknowledgement, that at the time of the departure of the last mail which arrived before the conclusion of the contract, or where there is no regular mail service at the time of first favorable opportunity for the conveyance of the information, the vessel was still lying at the place from whence she must leave.

586. Insurance is void if made on vessels, which are not yet at the place from which the risk commences to run, or which are not yet ready to undertake the voyage or to take in cargo, or if made on goods

which cannot be laden immediately, unless mention be made of the said circumstance in the policy, or unless the policy contains the declaration, that the insured bears no knowledge thereof, with mention of the letter of advice or instruction, or in default of such letter, the declaration that none exists, and in all cases mention of the last news which the insured has obtained of the ship or of the cargo.

The insured and his mandatory are holden in case of damage, to confirm their ignorance with oath on demand of the insurer.

587. In insurance on bottomry the policy must specify separately the sum loaned and the bottomry premium; otherwise the insurance shall be accounted not to include the bottomry premium.

588. Insurance on bottomry cannot exist, when the policy does not contain :

The name of the lender, though even he were the master;

The name of the vessel which is to make the voyage, and that of the master;

The destination of the vessel; Mention if the money for the necessary repairs or other necessary expenses has been given at the place of lading or at a port of necessity.

589. If, during the voyage, the master has been in the necessity to take up money on bottomry, the lender can have the amount so advanced insured, if even insurance had been previously made on the subject effected by bottomry.

590. When, without necessity and in the interest only of the borrower, bottomry is effected on a vessel or goods already insured, the lender becomes subrogated to all the rights which the borrower would have had against the insurer to the amount of the sum loaned.

591. If however the lender bore no knowledge of the contract of insurance, and he confirms this with oath, the insurers on bottomry are not discharged, but the insured is holden, in case of damage, to cede to them the rights which he may have against the insurers of the vessel or of the goods by virtue of the legal subrogation.

In case the lender proceeds immediately against the insurers of the vessels or the cargo, the insurers of the moneys advanced shall be discharged on making restitution of the premium.

592. Goods may be insured for the full value at which they are estimated at the time and at place of shipment, with all expenses until on board, including the insurance premium, without it being necessary to specify the value of each subject separately.

593. The real value of goods insured may be augmented with the freight, import duties and other expenses, which in case of safe arrival must necessarily be paid, provided that mention be made thereof in the policy.

594. The augmentation mentioned in the preceding article is not binding in case the effects insured do not arrive at the place of destination, for so far as the payment of the freight, import duties and other expenses is thereby wholly or in part avoided.

But if the freight had to be paid in advance, according to agreement made with the master before his departure, the insurance continues in force in respect of this advance; in case of disaster or damage, the fact of the payment in advance must be proved.

595. Insurance on expected profits must be separately valued in the policy, with special designation of the goods on which the insurance is effected under pain of nullity.

If the value of the property insured is stated in gross, with express stipulation that the excess of the value of the goods shall be considered as expected profits, the insurance is valid for the value of the subjects insured; but the excess shall be reduced to the quantity of expected profits that can be proved, calculated according to the rules mentioned in articles 601 and 602.

596. Freight can be insured for the full amount.

597. If the vessel is lost or stranded, the insurance is reduced to the extent of whatever the master or the owner of the vessel, by reason of said calamity, is released from paying for wages or hire to the crew, and other expenses, which in case of safe arrival must be paid.

598. Insurance against slavery is made for a stipulated sum, for which the person enslaved may be ransomed.

The difference between the price of the ransom and the amount insured is for the benefit of the insurer; in case a larger sum is required than that fixed by the contract to effect the ransom, the insurer is only liable for the amount expressed in the policy.

SECTION THE SECOND.

Of the valuation of insured subjects.

599. Where the entire value has been insured on the keel or the body of a vessel, it can be subsequently fixed or diminished by judicial decision, if necessary on the report of experts, even though it had been previously determined.

1. If the vessel is estimated in the policy according to the purchase sum, or to the cost of construction, and the same has already become of less value, either through age or in consequence of the performance of frequent voyages;
2. If the vessel having been insured for many voyages, after performance of one or more voyages, and having earned freight in consequence thereof, is subsequently lost on one of the insured voyages.

600. If the insurance is made for a homeward voyage (upon returns) from a country, where commerce is only carried on by barter, the valuation of the goods insured shall be made on the cost of those given in barter, adding all charges of transportation.

601. Profits expected are evidenced by acknowledged price currents, or, in default thereof, by an appraisement of experts, in which is certified the profit, which the insured goods, in case of safe arrival, after an ordinary voyage, would reasonably have yielded at the place of destination.

602. If it appears from the price-currents or from the appraisement by experts, that in case of safe arrival, the profit would have been less than the sum, which the insured had given up in the policy the insurer is only liable for such less sum.

He owes nothing, if the insured subjects would have given no profit.

603. The amount of the freight is evidenced by the charter party or the bills of lading.

In default of charter party or bills of lading, and in respect of goods belonging to the ship-owners themselves, the amount of freight is estimated by experts.

SECTION THE THIRD.

Of the commencement and termination of the risks.

604. In an insurance on a vessel, the risk runs for the insurer from the moment that the master begins with the lading of merchandise; or if she is to leave only in ballast, as soon as a commencement is made with loading the ballast.

605. In insurance mentioned in the preceding article, the risk of the insurer terminates twenty one days after the insured vessel has arrived at the place of destination, or so much sooner as the last merchandise or goods have been discharged.

606. In an insurance on a vessel for the outward and homeward voyage, or for more than one voyage, the insurer runs the risk, without interruption, until and inclusive of the twenty first day after the completion of the last voyage, or for so many days less as the last merchandise or goods have been discharged.

607. With respect to merchandise or goods insured, the risk commences for account of the insurer, as soon as the goods are brought upon the wharf or shore, in order to be thence taken in or transported on board the vessels in which the same are to be laden, and terminates fifteen days after the arrival of the vessel at her port of destination, or so much sooner as the insured goods shall have been there discharged, or put on the wharf or on shore.

608. In insurance on goods or merchandise, the risk continues without interruption, even where the master has been obliged to put into a port of necessity, there to discharge and to repair, until the voyage has been legally broken or that the insured has given orders not to reload the goods, or until the voyage is entirely fulfilled.

609. If the master or the insured is prevented, by lawful reasons, from discharging the goods within the time fixed by article 607, without the delay being imputable to his fault, the risk shall continue to run for account of the insurer, until the goods are discharged.

610. In an insurance on freight to be earned, the risks commences to run for the insurer from the moment and according that the goods and merchandise paying freight are laden in the vessel, and terminates fifteen days after the arrival of the vessel at the place of destination, or sooner, if the goods and merchandise paying freight have been discharged before that time.

The provision of article 609 shall also be applicable in this case.

611. In insurance on bottomry, the risks of the insurer commence and terminate from the moment, that the risks of the lender begin and terminate according to the law, or according to stipulation notified to the insurer.

612. Where the voyage is broken off after the risks of the insurer have commenced to run, the risks in an insurance on goods continue for fifteen days, and in an insurance on a vessel for twenty one days, after the cessation of the voyage has taken place or sooner, if the last goods or merchandise have been discharged before that time.

613. The time at which the risks on expected profits commence and terminate is equal to that fixed for goods.

614. In all insurances, the contracting parties are at liberty to make other conditions in the policy, touching the commencement and the termination of the precise time of the risks.

SECTION THE FOURTH.

Of the rights and obligations of the insurer and the insured.

615. If the voyage is broken off before the insurer has commenced to run any risk, the insurance is annulled.

The premium shall be retained by the insured or refunded by the insurer; in both cases on the payment (to the insurer) of a half per cent on the sum insured, or the half of the premium; if the same amounts to less than one per cent.

616. If the voyage is broken off after the risk of the insurer has commenced, but before the vessel has weighed anchor or made loose her fasts at the last place of clearance, the insurer shall receive one per cent on the sum insured, if the premium amounts to one per cent or more; but if it is less than one per cent, the insurer shall receive the entire premium.

The full premium is always due, when the insured claims any compensation whatsoever.

617. For account of the insurer are all losses and damages which befall the insured subjects through storm, tempest, shipwreck, stranding, collision, compulsory change of course, of the voyage or of the vessel, through jettison, fire, violence, inundation seizure, privateers, pirates, rovers, detention by order of superior authority, declaration of war, reprisals; all damage incurred through negligence or barratry of the master or the crew, and, in general, by all misfortunes of the sea, whatsoever, unless the insurer be exempt from certain risks by virtue of the law, or by stipulation inserted in the policy.

618. In an insurance on the vessel, every voluntary change of the course or of the voyage, and in an insurance on freight, every voluntary change of course, of the voyage or of the vessel, in both cases by the proper act of the master, or upon the order of the owners of the vessel, causes the obligation of the insurer to cease, unless the contrary be expressly stipulated in the policy in respect of the master, who has done so on his own authority.

It is the same in case of insurance on goods, if the voluntary changing of the course, of the voyage or of the vessel has taken place, either with express or tacit consent of the insured.

The voyage is reputed to be changed, as soon as the master has commenced the same for other destination, than that for which is insured.

619. The voluntary changing of the course does not consist in a trifling deviation, but only when the master, without acknowledged necessity or utility, and without sufficient cause in the interest of the vessel and cargo, puts into a port situated outside of his course, or where he follows another direction than that which he should have taken.

In case of dispute in respect hereof, the judge shall decide, after the hearing of experts.

620. In an insurance on the vessel and the freight, the insurer is not bound to pay the damage caused by barratry of the master, unless otherwise stipulated in the policy.

This stipulation is illicit, if the master is sole owner of the vessel, or far as he has a part therein.

621. In an insurance on goods, belonging to the owners of the vessel in which they are laden, the insurers are likewise not responsible for the barratry of the master, or for the losses or damage which are occasioned by his voluntary changing of the course, of the voyage or of the vessel, even where such took place without the fault or without the knowledge of the insured, if there is no stipulation to the contrary in the policy.

622. In case of insurance on freight, the insurer is not responsible for the damage arising from the moment, that the master, being provided with all that is necessary for the voyage, without lawful reasons in the interest of the vessel or cargo, has neglected the opportunity to further the voyage, unless the insurer had expressly insured against such neglect.

623. In case of insurance of liquid wares such as wine, brandy, oil, honey, pitch, tar, sirup or the like, and of salt and sugar, the insurer is not holden to compensate any damage occasioned by leakage or liquefaction, unless arising from the striking, shipwreck or stranding of the vessel, or if the insured goods have been discharged and reladen in a port of necessity.

If the causes, or one of the same, exist, in consequence of which the insurer is obliged to pay the damage occasioned by leakage or liquefaction, there must however be deducted there from the loss which similar goods ordinarily sustain, according to the opinion of experts.

624. If in the cases where the law permits, insurance is effected under the general denomination of goods and merchandise, or on any insurable interest whatever of the insured, and the risk is incurred on subjects which are liable to speedy decay or deterioration, the

insurer is not holden to the extent of the amount of such damage arising therefrom, and which is not borne by the insurers according to existing customs at the place of insurance. In case of disagreement, the judge shall decide after the hearing of experts.

If among the aforesaid goods there were such, which are generally not otherwise insured at the place where the insurance is contracted, than free from damage, leakage and liquefaction, the insurer is entirely released from all liability in respect of such damage.

625. If the goods of the kind mentioned in the preceding article are designated in the policy by their names without any special stipulation, the insurer is not responsible for the average under three per cent.

626. Where an insurance is contracted with the clause "free from damage" whether there be added thereto or not, "in case of safe arrival," the insurer is not responsible for any damage, if the insured subjects arrive spoiled or deteriorated at their place of destination.

The same provision is applicable to the case, where the goods have been sold on the way or in a port of necessity, in consequence of damage or from fear that they would spoil or infect other goods.

Gross average, likewise damage caused by jettison, capture, pillage or the like, or by the loss of the vessel, shall notwithstanding said clause be borne by the insurer.

627. In an insurance under the clause "free from molestation", the insurer is exonerated as soon as the subject insured is lost or damaged by violence, capture, pillage by privateers, piracy, detention by command of superior authority, declaration of war, and reprisals.

The insurance is annulled, as soon as the subject insured is detained or the route changed in consequence of the molestation.

The whole saving the obligation of the insurer to compensate the damage, which has taken place before the molestation.

628. If in case of the clause free from molestation it is stipulated by the insured, that the insurer, notwithstanding the capture, must continue to take the ordinary risks, the insurer is liable, even after this molestation, for all ordinary damage sustained by the subject insured, until the vessel is anchored in port, with exception however of such damage, as without doubt arises directly from the molestation.

In case of doubt as to the cause of the loss, the insured subjects shall be presumed to have perished by an ordinary disaster, for which the insurer is liable.

629. If a vessel or merchandise insured free from molestation are hostilely seized or detained in a port, before departure of the same, such shall be reputed equivalent to a capture and the risks cease to be for account of the insurer.

630. If insurance is made for a specified time, in manner as mentioned in article 575, the insured must prove that the subjects insured have been laden in the vessel damaged or lost within the specified time.

631. In case of indemnity in respect of goods bought or laden by the master for his own account, or for that of the vessel, the proof of the purchase, and a bill of lading of the merchandise, signed by two of the foremost of the crew must be laid over.

632. If the insurance takes place by division in respect of merchandise, which must be laden in more than one vessel, with a statement of the sum, which is insured upon each vessel, and if the entire cargo is laden in one vessel or in a less number than has been designated in the contract, the insurer is not further liable than for the sum that he has insured on the vessel or vessels which have received the cargo, notwithstanding the loss of all the vessels designated; and he shall receive nevertheless a half percent or less, according to the distinction made in art. 615, of the sums whereof the insurance has become null and void.

633. The insurer is discharged from further risks, and is entitled to the premium, if the insured sends the vessel to a place more distant than that named in the policy.

The insurance takes full effect if the voyage is shortened.

634. The insured is bound to communicate without delay to the insurer, or, if the policy is underwritten by more than one, to the first signer, all intelligence he receives concerning every disaster which may have befallen the ship or cargo, and he must give to those of the insurers who may so demand, copies or extracts of the letters containing the intelligence.

In default hereof, the insured is holden in costs, damages and interests.

635. As long as the insured is not entitled to abandon the subjects insured, and in consequence thereof does not abandon the same, he is bound, in case of shipwreck, stranding, capture or detention to employ all possible diligence and suitable efforts for the preservation or reclamation of the subjects insured.

He does not require for this purpose a special procuration (mandate) from the insurers, and he is even entitled to demand from them an adequate sum for the defrayal of the expenses, which must be disbursed towards the preservation or reclamation of the subjects insured.

636. The insurer, who must cause assistance to be rendered for the preservation or must make a reclamation out of the colony, and who has charged his usual correspondent therewith, or another house or person of good repute, is not responsible for the mandatory, but he is holden to cede to the insurer his right of action against the same.

637. In an insurance for indeterminate account, that is, when there is not inserted in the policy, to which nation the owner of the subject insured belongs, the insured is likewise bound in case of illegal capture or detention, to make reclamation, unless he be exempt therefrom by the policy.

638. The judgement of a foreign judge, whereby vessels or merchandise are confiscated as not being neutral property, but which have however been insured as such, is not sufficient to discharge the

insurer from the payment of the damage, if the insured can prove that the insured subject was veritably neutral property, and that he employed before the judge, who pronounced the judgement all means and laid over all the proofs, in order to prevent the condemnation.

639. In an insurance on bottomry, the insurer is not responsible for the fraud of the borrower, unless the contrary were stipulated in the policy.

640. The change of voyage by the act of the borrower on bottomry, causes likewise the bottomry-insurance to cease, unless the contrary were stipulated in the policy.

The insurer receives in this case one half percent on the sum insured.

641. If augmentation of premium is stipulated in the event of war arising or other events occurring, the same shall be regulated, if necessary by the judge, for as far as the amount of the augmentation is not stated in the policy, after the hearing of experts, and having regard to the risks, the circumstances and stipulations made in the policy.

642. In all cases where the insured subjects have not been sent forward, or where a less quantity has been sent, or where by mistake too much has been insured, and further in general in the cases provided for by art. 461, the insurer shall receive one half per cent on the sum insured or the half of the premium, and such in the same way as is fixed by art. 615, saving when, in a special case, he is allowed more by the law or by the contract.

Whoever has contracted an insurance for another, without stating his name in the policy, cannot demand back the premium, because the party concerned has not sent forward the goods insured, or that he has sent them in less quantity.

SECTION THE FIFTH.

Of abandonment.

643. Vessels and goods insured can be abandoned or relinquished to the insurer, in case:

Of shipwreck ;

Of stranding with destruction ;

Of unseaworthiness by sea damage ;

Of loss or deterioration by sea damage ;

Of capture or detention by a foreign power ;

Of detention by the Netherland or Colonial Government, after the commencement of the voyage ;

The whole saving the provisions of the following articles.

644. The abandonment of the vessel, in consequence of unseaworthiness, cannot take place, if the same having struck or being stranded, can be got afloat again ; repaired and put in condition to prosecute her voyage to her place of destination, provided that the costs of repairs do not exceed three fourths of the estimated value of the vessel at the time of making the insurance.

645. If vessels or goods are stranded, captured or detained, the abandonment can be made immediately, if the insurer refuses or neglects to advance a sufficient sum for the purpose of defraying the expenses of preservation and reclamation.

In case of dispute this sum shall be estimated by the judge.

It is to the charge of the insurer, though even those expenses joined to the amount due for damage, exceed the sum for which the insurance was made.

646. The abandonment, by reason of loss or deterioration, cannot take place, unless the loss or damage amounts to or exceeds three fourths of the insured value.

647. The insured can also make abandonment to the insurer and there upon demand the payment, without being holden to prove the loss of the vessel, if since the day on which the vessel sailed, or since the day to which the last advices received refer, no intelligence whatever has been received of the same, to wit :

After expiration of six months, in respect of voyages from the Colony to one of the West-India islands, and to any of the American States situate on the Atlantic Ocean, between Brazil and North-America, and contrariwise.

After the expiration of twelve months in respect of voyages from the Colony to other than the afore mentioned parts of the continent and islands in America, to the continent and islands of Europe, to the Levant, to the Northern and Western coast of Africa until and inclusive of the Cape of Good Hope, and to the African islands situate to the West of that part of the world, and contrariwise.

After the expiration of eighteen months, in respect of voyages from the colony to all other parts of the world, and contrariwise.

In case of voyages between ports, all situated out of the colony, the term is regulated according to the distance of the ports, which approximates the most with the above mentioned provisions.

In all these cases, it suffices for the insured to declare, under tender of oath, that no intelligence has been received by him directly or indirectly touching the vessel insured, or of the vessel in which the insured goods are laden, without prejudice to contrary proof.

648. The abandonment can be made, in case of capture or detention, if the vessels or goods captured or detained have not been restored or released within the term designated by the preceding article, to be computed according to the place, where the capture or detention is effected, and from the day that the insured has received notice thereof.

In case of confiscation of the vessels or goods captured or detained the abandonment can be made immediately.

649. Where damaged goods or condemned vessels are sold on the passage, the insured can abandon his rights to the insurers, if, notwithstanding his endeavors, the purchase money has not been paid to him within the term fixed by article 647 ; the whole to be computed according to the distance of the place of the sale, and from the day, that the insured has received notice thereof.

650. In the cases mentioned in the three preceding articles, the abandonment must be notified to the insurer within three months after the expiration of the terms fixed by the said articles.

651. In all other cases, the abandonment must be notified within the terms mentioned in article 647, to be computed according to the distance of the place where the disaster has occurred, and from the day, that the insured has received notice thereof.

652. After the expiration of the terms fixed by the two preceding articles the insured is no longer entitled to make abandonment.

653. In the cases where abandonment can be made, the insured is holden to communicate to the insurer the advices that he has received within five days after their receipt, or, if there is no opportunity within five days for the transmission thereof, with the first opportunity offering, under pain of compensation of costs, damages and interests.

654. If an insurance has been made for a limited time, the loss of the vessel, in the cases and after expiration of the terms mentioned in article 647, shall be presumed to have taken place within the time of the insurance.

If it is however afterwards proved, that the damage occurred after expiration of the insurance, the abandonment becomes voided, and the indemnity paid must be returned, with lawful interest on the same.

655. The insured is holden on making abandonment, to make declaration of all the insurances which he has contracted or ordered to be made on the subject insured, and of the loans on bottomry, which, with his knowledge, have been made upon the ship and the goods insured, in default whereof the time of payment, which ought to commence to run from the date of the abandonment, shall be suspended until when he shall have made the said declaration, without that there shall result there from any prolongation of the term fixed for making the abandonment.

In case of fraudulent insurances, the insured shall be deprived of the advantages of the insurance.

656. The insured is also holden on making the abandonment, to inform the insurer of all that he has done for the preservation or recovery of the subjects insured, and to designate the persons or correspondents employed by him for this purpose.

657. Abandonment cannot be made partially, nor conditionally.

If vessels or goods are not insured for their full value, and the insured himself has also taken the risk for a part, the abandonment shall not extend further than to the amount of whatever is insured, in proportion to the part which is not insured.

658. The abandonment being made in accordance with the provisions of the law, the subjects insured become the property of the insurer, to count from the day that notice is given of the abandonment, saving the portion of the insured, in the case of the second paragraph of the preceding article.

659. The insurer cannot relieve himself of the payment of the sum insured, under pretext that the vessel or goods insured have been released after the abandonment.

660. If the time of payment is not fixed by the contract, the insurer must pay the amount of the insurance and the costs of the abandonment six weeks after notice is given of the abandonment.

After that time he shall pay lawful interest.

The subjects abandoned are bound as security for the said payment.

CHAPTER THE TENTH.

OF INSURANCE AGAINST THE RISK OF CARRIAGE BY LAND AND ALONG THE COAST.

661. Besides the requirements mentioned in art. 238, the policy must contain the name of the carrier, of the skipper, or master, or of the forwarding merchant (*expediteur*) who has undertaken the transportation.

662. Insurances, which have for interest the risks of carriage by land, or along the coast are regulated in general and according to circumstances by the directions of the law concerning maritime insurance, saving the provisions of the following articles.

663. In case of insurance on goods, the risks commence to run for account of the insurer as soon as the goods are conveyed or delivered to the vehicle or vessel, the office, or at such other place, where goods are usually received for transportation, and terminate as soon as the goods have arrived at their destination and have been delivered to their address, or have been placed at the disposal of the insured or of his mandatories.

664. In case of insurance on goods, which must be transported by land or alternately by land and by water, the risk continues for account of the insurer, should even the goods, in transit, be transhipped to other conveyances or vessels.

665. The same holds good in case of insurance of goods, which must be transported coastwise, if the goods are transhipped in other vessels, unless the insurance is contracted for goods to be laden in a vessel designated.

Even in this last case the risks continue for account of the insurer, if the transshipment in other vessels has taken place for the purpose of getting the vessel afloat by ebbside, or in consequence of other unavoidable reasons.

666. On insurance of goods, which are to be transported by land, the insurer is responsible for the loss or damage, occasioned by the fault or the fraud of the persons charged with the receipt, the transportation and delivery.

667. The provisions of the fifth section of the ninth chapter are also applicable to the insurances mentioned in this chapter.

668. Parties are at liberty to agree to depart from the rules laid down by articles 663 and following.

CHAPTER THE ELEVENTH.

OF AVERAGE.

SECTION THE FIRST.

of average in general.

669. All extraordinary expenses made in behalf of the ship and the goods collectively or separately, all damage happening to the ship and the goods during the time appointed by the third section of the ninth chapter in respect of the commencement and termination of the risks, are reputed to be average.

670. If not otherwise stipulated between parties, average shall be regulated according to the following provisions.

671. There are two sorts of average :

Gross or general average, and particular average or partial loss.

The first mentioned form a charge upon the ship and the freight, and the cargo ; the last is borne either by the vessel, or by the good separately, that sustained the damage or occasioned the expenses.

672. General average is :

1. Whatever is given to the enemy or to pirates for the liberation or ransom of the vessel and cargo.
In case of doubt, the liberation shall always be reputed to have been made in the interest of the vessel and cargo ;
2. Whatever has been jettisoned for the common safety or common benefit of ship and cargo ;
3. Cables, masts, sails and other furniture, which have been out away or broken for the same purpose ;
4. Anchors, cables and other things, which have had to be abandoned (slipped) for the same purpose ;
5. The loss occasioned by jettison to the merchandise remaining in the vessel ;
6. The damage done intentionally to the vessel to facilitate the throwing over board, the removal or the saving of the goods, or to facilitate the discharge of water, and the damage happening on this occasion to the cargo ;
7. The attendance, medical treatment, the maintenance and the indemnification of all persons on board, who are wounded or mutilated in defending the vessel ;
8. The indemnity or the ransom of those, who having been sent on sea or on shore in the service of the vessel or cargo, have been captured, or made prisoners or slaves ;
9. The wages and the maintenance of the crew during the time that the vessel was compelled to remain in a port of necessity.
10. Pilotage and other harbordues, which must be paid on entering or leaving a port of necessity ;
11. The rent of magazines and depositories in which are stored the goods, which cannot remain on board the vessel while repairs are being made in a port of necessity.

12. The charges of reclamation, if the vessel or goods have been detained or captured, and both are reclaimed by the master ;
13. The wages and the maintenance of the crew, pending the aforesaid reclamation, if ship and cargo are liberated ;
14. The expenses of unloading, lighterage, likewise the expenses to bring a vessel into port or into a river, if the same is forced thereto by reason of storm, pursuit by the enemy or pirates, or in consequence of any other reason, for the preservation of ship and cargo ; besides the loss or the damage occasioned to the goods by the unloading and loading of the same from necessity in lighters or boats, and their reshipment on board the vessel ;
15. The damage occasioned to the ship or to the cargo, or to both, if the ship, in order to prevent her capture or loss, has been intentionally stranded, as well as where such has taken place in any other pressing danger for the preservation of ship and cargo ;
16. The expenses and compensation for assistance (hulploonen) in getting the stranded vessel afloat in the case of the preceding article, and all compensation for extraordinary service for the purpose of preventing the loss or the capture of the ship ;
17. The loss or the damage sustained by the goods, which in case of danger, are put in lighters or boats, therein included the portion of the gross-average, due by said goods to the lighters or boats, and reciprocally the loss or the damage occasioned to the goods remaining in the principal vessel, or to this vessel herself, after the removal of the goods, for as far as the damage or loss are included in general average ;
18. The wages and maintenance of the crew, if the vessel, after the commencement of the voyage, is detained by a foreign power or by the breaking out of war, as long as ship and cargo have not been released from all reciprocal obligations ;
19. The premium of moneys loaned on bottomry for defraying the expenses incurred in general-average.
20. The premium for insurance of the expenses mentioned in the preceding article, or of the loss, sustained in a port of necessity by the sale of a part of the cargo for the purpose of making good these average expenses ;
21. The cost of adjusting the average ;
22. The costs, including the wages and the maintenance of the crew, occasioned by an extraordinary quarantine not contemplated at the time of concluding the affreightment, for as far as the vessel and cargo are subject thereto.

23. In general, all damage which is done intentionally, and sustained as a direct consequence thereof, and the expenses, which are made under similar circumstances, after the necessary consultation for the common benefit of ship and cargo.

673. Where inherent defects of the vessel, unseaworthiness of the same, or the fault or negligence of the master or of the crew, have occasioned the damage or expenses, these although made voluntarily in behalf of the ship and cargo and after the necessary consultation, are not contributed for in general average.

674. Particular average is :

1. All damage and loss happening to the ship or to the cargo by storm, capture, shipwreck or accidental stranding.
2. The salvage compensation and the salvage charges ;
3. The loss of, and damage sustained by cables, anchors, cordage, sails, bowsprits, topmasts, yardarms, boats and ship furniture, occasioned by storm or other perils of the sea ;
4. The charges of reclamation, the maintenance and the wages of the crew pending the reclamation, if only the ship or the cargo has been detained ;
5. The repairs of barrels, and the expenses for the preservation of the merchandise damaged, for as far as the one and the other is not the immediate result of a disaster giving rise to general average ;
6. The augmentation of freight and the expenses of loading and discharging, which must be paid in the event of the condemnation of a vessel during the voyage, if the goods are transported by another vessel for account of the shipper, according to the provisions of art. 457 of the present code ;
7. In general, all damage, losses and expenses, which have not been occasioned or made voluntarily and for the preservation and common benefit of the vessel and cargo, but which have been incurred by or made for the vessel only, or for the cargo only, and which in consequence thereof are not to be borne under general average pursuant to article 672.

675. If, in consequence of shoals shallows or sand banks known to exist, the vessel cannot be taken with her full cargo from the place of departure, nor to the place of destination, in consequence whereof a part of the cargo must be conveyed on board with lighters, or must be discharged in lighters, such lighterage shall not be considered as average.

The costs are to the charge of the vessel, unless otherwise stipulated in the bills of lading or in the charterparty.

676. The provisions of the articles 671, 672, 673 and 674, in respect of general and particular average, are also applicable to the said lighters, and to the effects laden in the same.

677. If during the transportation any damage befalls either the lighters or the goods laden in the same, which comes under general average, such damage shall be borne for one third by the lighters, and for two thirds by the goods which are therein laden.

These two thirds shall subsequently be assessed as general average upon the principal vessel, the freight and the entire cargo, including that of the lighters.

678. Reciprocally and until the moment that the goods laden in the lighters have been discharged at the place of their destination, and delivered to the consignees, they continue in communion with the principal vessel and remainder of the cargo, and bear in the general average which falls to the ship and cargo.

679. Goods which have not yet been taken on board, either of the principal ship or of the craft destined for the conveyance of the same to said ship, do not contribute in any case to the losses which befall the principal vessel in which they are to be laden.

680. The damage happening to merchandise, in consequence of the neglect of the master to close the hatches, to moor the ship properly, to provide suitable apparatus for hoisting, and by reason of all other accidents proceeding from designor negligence of the master, is particular average, for which the shipper has his recourse upon the master, the ship and the freight.

681. Pilotage, towage and other dues for going in and out of harbors or rivers, all tollage and expenses on leaving or passing by, all tonnage, anchorage, light-dues and beaconage, and all other dues which have reference to navigation, are not average, but are the ordinary expenses for account of the vessel, unless otherwise stipulated by the bill of lading or the charter party.

These charges can never be brought against the insurer, unless in the special case, that the same proceed from any unforeseen or extraordinary circumstance, arising during the voyage.

682. In order to find the particular average which the insurer must pay for merchandise insured against all risks, the following directions obtain :

Whatever on the passage is pillaged or lost, or is sold in consequence of damage by maritime disaster, or from another cause against which is insured, shall be estimated according to the invoice value, or, in default hereof, according to the value for which the goods are insured conformable to the directions of the law, and this amount is paid by the insurer.

In case of safe arrival of the property insured, if the same is partly or wholly damaged, it shall be determined by experts what would have been the value of the goods if they had arrived without damage, and what their actual value is, and the insurer shall pay such part of the amount of the insurance, as is in proportion to the difference which exists between these two values, besides the expenses incurred for the adjustment of the damage.

The whole without prejudice to the estimate of expected profits, if the same have been insured.

683. The insurer can in no case compel the insured to sel the subjects insured for the purpose of determining the value, unless the contrary were stipulated in the policy.

684. Where the damage must be adjusted out of the colony, the laws and usages of the place where the adjustment is made shall be followed.

685. Where the insured goods arrive in the colony damaged or deteriorated, and the damage is outwardly visible, the survey of the goods and the valuation of the damage must be made by experts before the goods are delivered into the custody of the insured.

If the damage is not outwardly visible at the time of unloading, the survey can be made after the goods shall have been delivered in the custody of the insured, provided that it be made within three times twenty four hours after the unloading, and without prejudice to other proofs that parties may deem requisite to bring forward.

686. In case of damage to an insured vessel by perils of the sea, the insurer pays only two thirds of the costs of repairs, whether the same be made or not, and such in proportion of the part insured to that which is not. A third remains for account of the insured, for the presumed amelioration from old to new.

687. If the repairs have been made, the amount of the cost shall be proved by bills and all other means of evidence, and if necessary by valuation made by experts.

If the repairs are not made, the amount of the same shall be estimated by experts.

688. In case it is proved, if necessary after the hearing of experts, that in consequence of the repairs made, the value of the vessel is augmented above one third, the insurer shall pay, in the proportion as is mentioned in art. 686, the full amount of the expenses, making deduction for the augmented value in consequence of the improvement.

689. If on the contrary the insured proves, if necessary after the hearing of experts, that the repairs have not occasioned any improvement or augmentation of the value of the vessel, and specially because the vessel was new and had sustained the damage on her first voyage, or because the damage has happened to new sails or new apparel, or to anchors, chaincables or to new copper sheathing, the deduction of one third does not take place, and the insurer shall be holden to indemnify the full expenses if the repairs, in proportion as is stated in art. 686.

690. If the cost of repairs exceeds three fourths of the value of the vessel, the vessel shall be considered as condemned with respect to the insurers, and if no abandonment has taken place, the insurer shall be then obliged to pay the insurance with deduction of the value of the damaged vessel or of the wreck.

691. If a vessel arrives at a port of necessity, and is afterwards lost in any manner whatever, the insurer is not holden to pay more than the sum he has insured.

The same takes place, if the vessel has cost for different repairs more than the sum insured.

692. Saving the provisions of the art. 623, 624 and 625, the insurer is not holden to contribute to any general or particular average, if the same does not amount to one percent of the value of the subject damaged, not including the expenses of survey, valuation and adjustment, without prejudice to the right of parties to make other stipulations in respect hereof.

693. The insurers on the vessel, the freight and cargo pay each so much for general average as said subjects, for as far as they have been insured, must bear respectively in the general average, and such in proportion of the part insured to that which is not insured.

694. When general and special average have been adjusted, the adjustment account, besides the documents pertaining thereto, must be delivered to the insurers. The latter are holden to pay whatever is due by them within six weeks after the delivery, and they must pay thereafter lawful interest.

SECTION THE SECOND.

Of the assesment and the contribution in grosse-average or general average.

695. The adjustment of general average is made at the place where the voyage terminates, unless otherwise stipulated by the parties.

696. If the voyage is broken off in the colony, or in case that vessels are stranded there, the adjustment is made at the place in the colony from whence the vessels have left or ought to have left.

697. The adjustment of general average is made at the request of the master, and by experts.

The experts are appointed by the parties, or by the high court of justice.

The experts must be sworn before entering on their duty.

The adjustment must be homologated by the high court of justice.

General average is adjusted out of the colony by the competent local authority.

698. If the voyage while in progress, has been abandoned altogether, or if the sale of the cargo has been made in a port of necessity, both accruing out of the colony, the average claim and the adjustment thereof shall be made at the place where such abandonment or sale has happened.

699. If the master neglects to make the claim mentioned in the preceding article, the owners of the vessel or of the goods can make the claim themselves, without prejudice to their action for indemnity against the master.

700. General average is chargeable :

On the value of the vessel according to the condition she is in on her arrival, with addition of whatever is given as indemnity for general average;

On the freight, less the wages and the maintenance of the crew, and

On the value of the goods which were on board the vessel or in the lighters or boats at the time of the occurrence of the damage, or which before the disaster happened, were jettisoned and are contributed for, or which had to be sold of necessity to cover the average-losses.

Coined money contributes, in general average according to the course of exchange at the place where the voyage terminates.

701. The cargo is valued at the sum it is worth at the port of discharge, less the freight, import duties and expenses of discharging the cargo, as well as the particular average sustained during the voyage.

This is subject to exception in the following cases :

If the adjustment must be made in the colony at the place from whence the vessels have left or ought to have left, the price of the goods laden on board shall be fixed according to their value at the time of loading, with the expenses till on board, the insurance premium not included; and in case the goods are damaged then according to their actual value.

If the voyage has been abandoned, or if the goods have been sold out of the colony, and the average could not be adjusted there, the contributory value is taken at the price the goods were worth at the place of abandonment, or at the nett proceeds which the goods brought at the place of the sale.

702. The goods jettisoned are valued according to the market price at the place of discharge of the vessel, less the freight, import duties and ordinary expenses; the nature and quality of the same are ascertained from the bills of lading, invoices and other proofs.

703. If the nature or the quality of the merchandise has been wrongfully set down in the bill of lading, and the goods are found to be of greater value, the damage shall be contributed for at the rate of the actual value, if the goods have been saved.

But if they are lost by jettison, the damage shall be compensated according to the quality designated in the bill of lading.

If the goods declared are of an inferior quality to that designated in the bill of lading, they shall bear in the average according to the quality set down in the bill of lading, if they have been saved.

If they have been jettisoned, they are paid for at the rate of their actual value.

704. The stores, the clothing of the crew and the ordinary clothing of the passengers, as well as the ammunition required for the defense of the vessel, do not bear in the damage from the jettison of the goods.

The value of whatever of that nature is jettisoned shall be indemnified by contribution on all other goods.

705. The goods whereof there is no bill of lading from the master, or which are not noted on the manifest of the cargo, are not paid for, if they have been jettisoned; they contribute towards the average, if they are saved.

706. The goods laden on the orlop of the ship, contribute also towards the damage, if they are saved.

If the master has placed the goods on the orlop without the knowledge or the consent of the shipper, and they have been jettisoned or damaged by the jettison, the shipper can claim a general average contribution, saving the recourse of all parties concerned on the vessel and the master.

707. If the ship is lost, notwithstanding the jettison of the goods, or the cutting away of her tackle and furniture, no contribution takes place.

The goods which remained in good condition or were saved, are not chargeable for any payment, or general average contribution for the things jettisoned, damaged or cut away.

708. If the vessel is saved by the jettison of the goods or the cutting away of the tackle and furniture, and she is afterwards lost while continuing her voyage, the goods which are then saved contribute only in the jettison, according to their value at that time, after deducting the salvage services.

709. If the vessel and the cargo are saved by the cutting away of tackle and furniture or by any other damage done to the ship, and the goods are afterwards lost or pillaged, the master has no claim on the owners, shippers or consignees of these goods for contribution in consequence of the said cutting away or damage.

710. If the goods are lost by the fault or act of the master, they bear nevertheless in the general average.

711. The owner of a cargo need not in any case contribute more in general average than the value of the goods, according to their worth at the time of arrival, independent of such expenses which the master, after the loss of the vessel or the capture and detention of the goods, has made in good faith, even without order, to save something from the wreck, or to reclaim the goods captured, even should such be without favorable result.

712. If, after the contribution, the goods jettisoned have been recovered by the owners, they are holden to return to the master and the parties interested in the cargo, that which they have received in the contribution for the said goods, less the damage, expenses and salvage services.

In this case, the amount returned is enjoyed between the vessel and the parties interested in the same proportion as they bore in the contribution occasioned by the jettison.

713. If the owner of the goods jettisoned recovers the same, without making claim for any indemnity, he shall, in no case, bear in the general average sustained by the goods saved after the jettison.

CHAPTER THE TWELFTH.

OF EXTINCTION OF OBLIGATIONS IN MARITIME COMMERCE.

714. All actions are prescribed by the lapse of one year :

1. For the payment of freight, wages and hire of the master the officers and mariners ;
2. For the payment of maintenance furnished to the officers and mariners, by order of the master ;
3. For the delivery of merchandise ;
4. For the payment of what is due by passengers.

These prescriptions (1) begin to run, as follows :

Those of No. 1, after the termination of the voyage ;

Those of No. 2, after the delivery ;

Those of No. 3 and 4, after the arrival of the vessel.

715. By a lapse of three years is prescribed :

Every action for the delivery of necessaries for the equipment and victualling of the vessel, likewise for lumber, sails, anchors and whatever is required for building and repairing and lastly for the wages of workmen and the work done to the vessel ;

Every action on account of damage occasioned by collision.

The first mentioned prescription begins to run from the day of the delivery of the articles, or from the completion of the work, and the last mentioned from the day on which the occurrence took place.

716. By a lapse of five years is prescribed :

Every action, arising from a bottomry bond or from a policy of insurance.

This prescription begins to run from the day of the conclusion of the contract.

717. Every action, between interested parties, for contribution by way of general average, is prescribed at two years after the termination of the voyage.

718. The preference on vessels, the freight and the goods, in consequence of a bottomry-debt, ceases six months after the arrival of the vessel at the place where the voyage terminates, if the bottomry bond is executed in one of the West-India islands, or in any place belonging to the states of America on the Atlantic Ocean between the Brazils and North-America; after the expiration of a year, if the same is executed in any other of the aforesaid parts of the continent or the islands of America, on the continent or in the islands of Europe, in the Levant, at the northern or western coast of Africa until and inclusive of the Cape of Good Hope or on the islands of Africa situate to the west of that part of the world; and after the expiration of two years in all other parts of the world.

(1) The term prescription is employed in the sense in which "limitation" is used in England and America.

These terms are doubled in case of maritime war.

719. All action against the master and the insurers for damage sustained by the goods laden on board, is barred, if the goods have been received without survey and valuation as ordered by the law, or if the damage is not outwardly visible, in case the survey and the valuation did not take place within the time appointed by the law.

720. The provision of art. 1992 of the Civil Code is applicable to the prescription mentioned in art. 714, 715 and 716.

CHAPTER THE THIRTEENTH.

OF VESSELS OF TEN TONS OR LESS.

721. The provisions of art. 300, of art 301 saving the modification contained in art. 722, of the art. 302 and 303 are applicable to the association of owners and owners of vessels of a burthen of ten tons or less.

For the rest the rights and obligations between the association of owners and owners of these vessels are regulated according to the provisions of the eight chapter of the third book of the Civil Code.

722. The liability of the association of owners and the owners of the vessels indicated in the preceding article towards the letter to freight, for the acts of the crew, is regulated according to the direction of art. 1384 of the Civil Code; they cannot free themselves from this liability by the abandonment, mentioned in art. 301 of this Code.

723. The rights and obligations arising from the hiring of masters, mates, boatmen or other part of the crew of the vessels mentioned in art. 721, are regulated according to the contract, according to the provisions of the Civil Code concerning the hiring of domestics and workmen, and according to the general ordinances passed in respect thereof.

724. The rights and obligations arising from affreightment, the time of loading and discharging, and all that relates thereto, are regulated, in respect of the vessels in article 721, according to the provisions of the fifth chapter of the first book of this Code, by those of the Civil Code concerning hiring and letting, by the general ordinances passed in respect thereof, and, in default of these, according to local custom.

725. The directions of the sixth chapter of this book are applicable to the vessels indicated in art. 721, with this modification, that, in the cases mentioned in art. 518 and 520, each vessel, and each cargo, bears their own damage.

The same is also applicable to the case, that one of the two is a sea going vessel of more than ten tons, and that the other belongs to the vessels indicated in art. 721.

726. The directions of the seventh chapter of this book are in general, and according to circumstances, also applicable to the vessels indicated in art. 721.

The disputes about salvage and compensation for assistance shall be decided by the competent judge.

727. The provisions of the art. 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692 and 694 are also applicable to the vessels indicated in art. 721.

728. If goods are jettisoned for the preservation of the vessel and cargo, the contribution takes place in the same way and according to the same rules, which are prescribed in respect of maritime navigation.

729. The same rule obtains if goods are transshipped to the lighters or boats for the preservation of the vessel and cargo.

The expenses required for this purpose, the damage sustained by the goods, and the indemnity due to the lighters or boats, are borne by the principal vessel or boat (craft) and the cargo, in the manner as directed in the preceding article.

730. The other provisions of the eleventh chapter are not applicable to the vessels indicated in art. 721.

731. The directions of the twelfth chapter are also applicable in general, and according to circumstances, to the vessels indicated in art. 721.

BOOK THE THIRD.**OF THE MEASURES PROVIDED IN CASE
OF INSOLVENCY OF MERCHANTS.****CHAPTER THE FIRST.****OF FAILURE.****SECTION THE FIRST.**

Of the declaration of failure and of its consequences in general.

732. Every merchant, who stops payment, shall be declared by judicial judgement to be in a state of failure, either upon his own declaration, or upon a petition of one or more creditors, or finally on requisition of the public ministry.

733. He is holden within three days after he has stopped payment, to make a declaration at the office of records of the canton court of his domicile or, if the matter concerns commercial associations at the record office of the canton court, within whose jurisdiction the general office is established.

An authentic copy of the proces-verbal of the declaration shall be sent by the cantonjudge, as soon as possible, to the office of records of the high court of justice.

The second clause of art. 736 is also applicable in these cases; the copy of the proces-verbal, there referred to, shall be annexed to that whereof mention is made in the preceding clause of this article.

With respect to a partnership under a firm, the declaration must contain the name and place of residence of each of the partners bound in entirety.

734. The application for a declaration of failure by creditors must be made by petition to the high court of justice, (1) accompanied with the proof or indication of the facts and circumstances, whereby it is made evident, that the creditor has actually stopped payment.

The petition must be delivered at the office of records of the high court of justice and a note of the day of delivery shall be made in a register kept for this purpose.

The high court of justice shall decide on the petition with the utmost dispatch.

It can hear the debtor beforehand, or cause him to be summoned by letter from the recorder.

(1) See art. 28 of the ordinance of the 2/15 July 1875, Publication No. 6 by which the attributes of the President, members, and recorder of the High Court of Justice are rendered applicable to the said functionaries at the Courts of Justice established at St. Martin and St. Eustatius.

It can also delegate to the cantonjudge the hearing of the debtor in which case the canton judge shall cause a copy of the proces-verbal in respect thereof to be delivered to the High Court of Justice.

735. The estate of a merchant who has died after the stoppage of payment, can be declared in a state of failure, provided the petition to that effect be made at the latest within three months after the decease of the debtor, without distinction if the heirs have made use or not of the right of deliberation, or have accepted the inheritance unconditionally, or under benefit of inventory, or whether they have renounced the same.

The petition must be made in the same manner as is indicated in the preceding article. The heirs shall be heard upon the petition or duly summoned by an act served at the house where the death of the person took place, without it being necessary to designate them by their names.

The declaration of failure carries with it by operation of law the separation of the estate of the decedent from that of his heirs, in the way and manner indicated in the civil Code.

736. The Public Ministry can demand, that the debtor, who has stopped payment, if need be after he has been heard or duly notified to appear, shall be declared in a state of failure, if he has absconded without having regulated his affairs, or if he is secreting his goods.

The canton judge can at first in the same cases, provide for the safety of the estate, by the affixing of seals or by other preservative measures.

In this case, he shall send immediately a copy of his proces-verbal to the Public Ministry.

737. The failure commences on the day of the declaration of the debtor, or on that of the filing of the creditors petition at the record office, or finally on the day of the requisition of the Public Ministry.

This day shall be mentioned in the judgement declarative of the failure.

738. The judgement declarative of the failure imports, that the debtor by operation of law loses the disposal and the management of his property.

This provision is in respect of the estate of a deceased debtor, applicable to his heirs, in the case mentioned in art. 735.

739. This judgement has likewise for result that, without prejudice to the provisions of the articles 824, 825 and 828, all judicial executions against the debtors movable or immovable goods, begun before his failure, shall be immediately stayed, and from that very moment also no judgement importing bodily arrest may be executed.

If, before the declaration of insolvency, an action for the restitution of goods sold and delivered has been instituted, in accordance with the eighth chapter of the first book, the same shall be continued against the curators, and the judgement executed.

The same is applicable to every action, whereby a certain and determinate subject, is reclaimed as property.

740. If before the failure of the debtor the proceedings in execution against his movable and immovable goods were so far advanced, that the day of the definitive sale was already fixed, and made known by the posting of notices, the curators can, on the authorisation of the judge commissary allow the sale to proceed for account of the estate ; without prejudice to the right of the plaintiff to the proceeds, if he is entitled to privilege, or holds a pledge or security by way of mortgage.

741. All debts not demandable on the day of the commencement of the failure, which have been paid by the debtor within the forty days preceding the day mentioned in art. 737 shall be refunded to the estate.

742. Pledge or mortgage, given by the debtor within forty days preceding the commencement of the failure is null in the two following cases :

1. If the same is given as security for engagements contracted before that time ;
2. If the same has been granted as security for engagements contracted within the aforesaid term, without being immediately established at the time of the original agreement.

The preceding rules, are not applicable to mortgages, which the guardian or curator is bound to give as security for his administration.

743. Every donation of movable or immovable goods, made by the debtor, within the term of sixty days antecedent to the commencement of the failure, is by operation of law null, in respect of the creditors, even though both parties have acted in good faith.

This term is doubled if the donee is related to the donor by consanguinity or affinity in the ascending line indefinitely, and in the collateral line to the fourth degree inclusive.

This provision is also applicable to the case, that the donation has been made to the donee, by means of intervening persons.

744. If it is proved, that the donor, at whatever time the donation may have taken place, bore knowledge of the bad condition of his estate, the donation can be annulled for the benefit of the creditors, though even the donee had acted in good faith.

The action for this annulment is no longer admissible as soon as the curators shall have rendered their account, pursuant to article 855.

745. All acts whereby the debtor has transferred the property in movable or immovable goods by onerous title, and in general all transactions howsoever denominated, at whatsoever time made, can be declared void on the demand of the creditors, if they prove, that the same have been made on both sides in fraud of the rights of the creditors.

746. By the failure the debts not yet enforceable, existing to the charge of the debtor, become due for as far as he is concerned.

If however the debt must be paid by annual instalments, or if it can only be exacted after the expiration of three years or later, without the debtor being in either case holden to pay interest, the judge shall fix the value of the principal, which the creditor has been admitted to prove against the estate, according to the less value proceeding from the above circumstance.

747. If claims arise to the charge of the insolvent, whereof the existence, or the amount depend on the fulfilment or non-fulfilment of certain condition in the future, and if the liquidation of the estate, in the interest of the creditors in general, cannot well be postponed until the final result, there shall be adopted, according to the nature of the case, one or the other of the following means of settlement.

748. The claims of the creditors shall be estimated by experts and if need be fixed by the High Court of Justice, according to the capital sum of the debt and in proportion to the injury which the insolvent estate can suffer from the non-fulfilment of the conditions, and to the benefit, which the creditor can enjoy from exemption of the fulfilment of the same.

749. If this estimate, from the nature of the case, is judged impracticable or contrary to the interest of the parties, the creditor can be admitted for the full amount of the contingent debt, and the dividend paid out to him, upon his giving sufficient security for the restitution with interests, if and for as far as it might later appear that the conditions annexed to the debt may not have been complied with.

750. If this security cannot be furnished, or if the judge, according to circumstances, deems it more advisable, in the interest of the parties, the High Court of Justice can order, that the dividend which the creditor can subsequently make claim to, shall be deposited in the consignment cash, until it shall appear whether the conditions have been complied with or not.

The amount thus deposited shall be subsequently paid out with interests after deducting the expenses, either to the creditor, or returned to the estate for the benefit of all the creditors or assignus.

751. If things are found in the estate of an insolvent, which belonged to him conditionally, or which he could only dispose of conditionally, the sale of such things shall be ordered subject to the charge on the part of the purchaser of complying with the conditions, unless the High Court, according the circumstances of the case, and in the interest of parties, may deem it more suitable to order the settlement in the manner as is directed in the three preceding articles or to postpone the sale of the article until the final liquidation.

752. If the contingent debt is secured by pledge, and the interest of the estate requires, that the pledgee be left in possession of the thing pledged, the latter, on the final settlement has only a claim for the deficiency as concurrent creditor on whatever may remain over from the estate.

If, to the contrary, the interest of the estate does not require that the pledge be left in possession of the pledgee, the same rules as are

above laid down shall be operative, with this difference, that in the case of art. 748, the creditor need not redeliver the pledge until the sum at which his interest has been estimated, shall have been paid to him, for as far as the said sum can be recovered on the pledge, and that, in the cases of articles 749 and 750, there shall be paid to him or deposited in the consignment-cash upon the delivery of the pledge, a sum equivalent to its value.

753. Where the debt is secured by mortgage, the, rules laid down in the articles 1239 and following of the Civil Code shall exclusively take effect.

On the final liquidation the creditor has for the deficiency, as concurrent creditor, only a claim on whatever may yet remain over from the estate.

754. With respect to yearly, monthly and other similar legacies donations or disbursements, the rules prescribed by art. 1802 of the Civil Code shall be applicable.

SECTION THE SECOND.

Of the formalities relative to the declaration of failure, and of the power of the curators.

755. The judgement declarative of the failure shall contain besides mention of the day on which the failure commences :

1. The designation of a member of the High Court of Justice as judge commissary in the failure ;
2. The appointment of one or more curators, to be chosen by preference from the creditors ;
The recorder (Griffier) is not eligible to this appointment ;
3. The order to care for the preservation of the effects of the estate by the affixing of seals, or by other measures, or by both.

A copy of the judgement shall be immediately sent to the canton judge by the recorder (Griffier) of the High Court of Justice.

756. The High Court of Justice, can at all times, on the proposal of the judge-commissary, or on a petition of one or more creditors discharge the curators or one or more of them, and can substitute others in their stead.

The High Court can likewise associate with the appointee one or more joint curators chosen from the creditors.

At the last meeting for the verification of the debts, the judge-commissary shall expressly consult the creditors relative to the said substitution or association, and make a report thereof to the High Court, which shall decide with respect thereto as it shall deem to the interest of the estate.

757. The High Court of Justice can order either by the judgement declarative of the failure, or thereafter, but in the latter case,

on the report of the judge commissary, that the insolvent be placed in custody, either in the debtor's prison or in his own dwelling, under the supervision of a marshal or an agent of the public force.

The order for this imprisonment for debt (gyzeling) shall be put in execution by the Public Ministry.

The High Court of Justice can, on the report of the judge commissary, or on the demand of the insolvent, and after having heard the judge commissary, permit the release of the debtor, either with or without bail for his appearance when required. In the last case the amount of the bail-bond shall be fixed by the High Court of Justice, and goes in case of non appearance to the benefit of the estate.

758. In all cases where the presence of the debtor is required concerning any particular matter of the estate he can, if he is in the debtor's prison or in custody out of prison, and upon the order of the judge, be removed from prison or from custody.

The judge commissary shall take the necessary measures to prevent the escape of the debtor.

759. The judgement declarative of failure is not appealable, and shall be executed without delay notwithstanding opposition.

He, who has been declared insolvent, whether at the request of the creditors, or on the demand of the Public Ministry, and who has not appeared either on a citation or voluntarily, or who has not been heard by the judge, has the right of opposition until the fourteenth day after the posting, of the judgement mentioned in art. 761.

The opposition mentioned above, can be prosecuted against those, on whose request or application the judgement declarative of failure is rendered.

With the exception of creditors on whose demand the declaration of failure has been rendered, and of the Public Ministry, all other creditors and interested parties, have the right to make opposition against every declaration of failure until the thirtieth day after the posting of the judgement mentioned in art. 761.

The terms, mentioned in this article, run without respect to the domicile of the creditors or other interested parties.

760. The curators must immediatly after their appointment make oath before the judge commissary to discharge faithfully the trust delegated to them. The judge commissary can depute the canton judge to administer the oath, in which case the latter shall cause to be sent to the judge commissary copy of the Proces verbal made in respect thereof.

761. The curators are holden within three days after their appointment, to cause to be posted at the places designated in the judgement declarative of the failure, an extract of said judgement, containing mention of the name, the domicile and the profession of the insolvent, the name of the judge commissary and that of the curators, likewise indication of the day on which the failure has commenced.

The posting of the judgement shall be certified to by the marshal on the first copy (grosse) of the judgement.

The extract above mentioned, if the judge commissary so order, shall moreover be inserted, through the care of the curators, in one of the news papers circulating in the colony.

762. In case of failure of a partnership, the affixing of the seals, if the same has been ordered, shall take place as well in the head-office as in the separate dwelling of each partner bound in entirety.

763. If the canton judge has not affixed the seals, after the receipt of the judgement mentioned in the last clause of art. 755, the curators shall cause such to be effected as soon as possible.

In all cases, the canton-judge is holden to send to the High Court of Justice a copy of the proces-verbal relative to the affixing of the seals.

764. The curators can at the time of the affixing of the seals or afterwards, demand that delivery be made to them of the paper belonging to the effects of the estate, payable at short notice (sight) or which must be presented for acceptance.

The canton-judge must make mention of this delivery on the Proces-verbal relative to the affixing of the seals, with an exact description of the things delivered.

765. On the proposal of the judge commissary and after having heard the curators, the High Court of Justice can order, that for the prevention of great loss to the estate, the business of the insolvent shall not be suddenly suspended, but continued for a time in the interest of the creditors by the curators, or by a third party under their direction.

In this case the curators can demand of the cantonjudge that the things required for prosecution of the said business shall not be placed under seal.

The high Court of Justice can at all times, on the proposal of the judge commissary and after hearing the curators, withdraw or modify the measures aforesaid.

766. The curators shall there upon proceed to make an inventory of the estate, and shall cause themselves to be assisted by experts for the valuation of the effects, unless the judge commissary, because of the trifling value of said effects, may have left the appraisement to be made by the curators themselves.

The insolvent debtor shall be asked to be present.

He is holden to give all possible information, if need be, to declare under oath inhands of the judge commissary, whether he possesses other goods than those found in his estate, and, this being the case, to deliver or point out such goods to the curators.

767. Where seals have been affixed, the inventory shall be made by the curators, according as the seals are removed in presence of the canton judge, who shall also sign the inventory.

Before and during the inventory, the curators can demand, that the books papers and documents of the insolvent be delivered to them by the canton judge, who shall make mention thereof, as well as of the condition of the said books, in the Proces-verbal relative to the removal of the seals.

768. If the affixing of seals has not been ordered, the inventory shall be made notariaily, unless the judge commissary, by reason of the special circumstances of the estate, shall permit the curators to make the same by act under private signature, in which case this act shall be deposited without delay at the office of records of the High Court of justice.

769. If the insolvent has made his balance sheet before the declaration of failure, he shall deliver the same to the curators, within twenty four hours after they shall have assumed their functions.

770. The balance sheet must contain a schedule and valuation of all the movable and immovable goods of the insolvent, a statement of the active and passive debts, with mention of the names of the debtors and creditors, and setting forth all information whereby the position of the debtors affairs can be judged.

771. If the balance sheet has not yet been made, the insolvent shall be holden to proceed thereto either in person, or by an attorney, in presence of the curators or of a person delegated by them.

The insolvent or his attorney has for this purpose, under supervision of the curators, access to the books and papers, but the same may not be removed, except with the consent of the judge commissary.

772. If the insolvent has neglected or refuses to prepare his balance sheet, or has died without having done so, the curators shall proceed to make one themselves, by means of the books and documents of the insolvent, and of such information and elucidations as they can procure.

773. The clerks and other employees of the insolvent may not abstain from giving such information and elucidations.

In case of refusal the judge commissary can, on the proposal of the curators interrogate them as well concerning the making up of the balance sheet as in respect of the causes and circumstances of the failure.

In no case may the wife or the widow, the children and other descendants, the parents and grand parents of the insolvent be interrogated in respect thereof.

774. The curators shall receive and give acquittances for all moneys coming in.

775. The letters addressed to the insolvent shall be opened by the curators. If the former is present, he can assist at the opening.

776. The curators can, under approbation of the judge commissary, deliver to the insolvent and his family the wearing-apparel, the linen and house-hold goods required for their own use, whereof a list shall be made by the curators.

If there is no action in bankruptcy against the insolvent, the curators can be authorised by the judge-commissary, to provide, according to circumstances, from the ready money for the maintenance of the family.

In this case, the High Court shall fix the amount which can be applied for that purpose.

777. All wares and merchandise, subject to speedy decay, can be sold by the curators on the authorisation of the judge commissary, in the manner as shall be directed by him.

For the sale of such articles as are not subject to speedy decay, but which in the interest of the estate ought not to be preserved in natura, the permission of the High Court, on the proposal of the judge commissary, shall be required; the High Court shall at the same time fix the manner in which the sale shall be made.

778. The proceeds of the sales after deduction of the expenses, and all other ready moneys shall be kept in a chest provided with two unlike working locks, and the judge-commissary shall determine the different persons to whom the keys shall be confided.

If this manner of keeping the moneys, should be subject to any difficulty, in consequence of the trifling amount of the same, or from other reasons, the judge commissary can order other measures in respect there of.

779. Every month, or as often as the judge-commissary shall demand it, the curators must deliver to him a statement of the cash account.

The judge-commissary can order, that the ready moneys wholly or partly, shall be deposited in the consignment cash for the benefit of the estate. These funds can, by virtue of an order from the judge-commissary, be withdrawn at any moment either in whole or in part.

780. The curators shall give to the judge-commissary, as often as it is required, a report, of whatever concerns the interests of the estate.

The judge-commissary exercises the necessary supervision over the curators; on his report the high court shall decide all disputes, arising from the failure and belonging to its competency.

781. If there is ground to institute an action at law or to carry on one already commenced, in which the estate is interested, the institution or carrying on of the suit shall take place by or against the curators.

The latter may not without the authorisation of the judge commissary institute or carry on a suit of that nature, nor make defence against the same.

In case of refusal by the judge commissary, the interested party can demand the authorisation from the high court of justice.

782. The curators are holden to perform all necessary acts for the preservation of the rights of the estate against the debtors of the insolvent.

SECTION THE THIRD.

Of the verification of the debts.

783. As soon as the balance sheet has been presented to the judge-commissary, he shall order a meeting of all the creditors, known or unknown, therein comprised those who enjoy the right of privilege, or hold a mortgage or pledge, in order to proceed to the verification of the debts.

784. The judge-commissary appoints the day, the hour and the place of meeting, according to circumstances, and within a reasonable time.

785. Within the five days after the order of the judge-commissary the curators shall call a meeting of the creditors, by a notice to be posted at the places designated by the judge-commissary in the warrant; this notice shall likewise be inserted if this is ordered by the judge-commissary, in one of the newspapers published in the colony.

The creditors who are known shall moreover be summoned by letter to appear within the above mentioned term.

786. On the appointed day, the meeting shall be held under the presidency of the judge-commissary and in presence of the curators.

The insolvent or his attorney can be present thereat. (1)

787. The judge-commissary shall commence by causing to be read over the list of the creditors, such as it shall have been made from the balance sheet or other documents, and he shall complete the said list with the names of those creditors who have thus far remained unknown, and who may present themselves at the meeting.

The list must contain the names and domicils of the creditors, as well as the nature and the amount of their claims.

The said list shall be closed and signed by the judge-commissary at the meeting.

788. The judge-commissary shall then proceed to the verification of the claims of those, who have appeared in person or by attorney at the meeting, and in the manner prescribed by the following articles.

789. Each of the creditors present shall be called upon individually, in order to prove the validity of his claim, in presence of the curators, and of the other creditors placed on the list mentioned in art. 787, for as far as they shall be present.

The creditors, who allege to be privileged, or who hold a mortgage or pledge, must make also declaration thereof.

(1) This will imply, that the insolvent has the right to appear at the meeting, and in no wise that it shall depend on the politeness of the judge-commissary or of the curators to admit him. De Pinto's handbook on the commercial code page 492.

790. If the admission of the creditor has not been contested by the curators, nor by any of the creditors present, and with respect to contingent debts, concerning which the necessary provisions appear in the articles 747 and following, if the whole of the creditors through the interposition of the judge commissary have come to an arrangement with the contingent debtor, the claim shall be entered, and carried to a list of creditors whose claims have been allowed.

The said list shall contain the names of the creditors, likewise the nature and the amount of the claim, and, in case of contingent debts, the manner in which they shall be discharged.

791. Every creditor who is present, likewise the curators, can demand, that prior to the said entry, the validity of the claim shall be confirmed with oath at the meeting before the judge-commissary by the creditor or his attorney specially appointed for the purpose.

In this case, the widow or the heirs of the creditor are only holden to declare, that they are conscientiously convinced of the validity of the claim.

792. If the creditor has given no special power for taking the oath, mention of the admission shall in the mean time be made in the Process verbal of the judge-commissary, and he shall be allowed a reasonable time to take the oath either in person or by attorney.

The procuration for taking the oath can be made by act under private signature, but it must specify in detail and exactly, the oath which is to be made.

793. If the admission of one or more creditors is contested by the curators or by any of the other creditors, or if any dispute should arise with respect to the mode of discharging the contingent debts indicated in the article 747 and following, and where the judge-commissary cannot reconcile parties, he shall make mention thereof in his proces-verbal, and refer said parties, in case no action has yet been brought on in respect of the dispute, to a session of the High Court, to be appointed by him, without a citation being required for the purpose.

794. If all the creditors placed on the list made up according to the balance sheet or to other documents, have been present at the meeting, either in person or by attorney, and if all the claims, without exception, have been allowed and carried to the list mentioned in art. 790, and where no delay has been required with respect of taking the oath by one or more creditors, who were represented by attorneys, the said list shall be definitively closed and signed by the judge-commissary, who shall make mention in his proces-verbal, that all the proceedings, relative to the verification of the claims have terminated.

In the contrary case, the list of admitted creditors shall be provisionally closed, and the further proceedings adjourned to another day.

795. If no dispute arises, which requires a judicial decision, the judge-commissary shall, before the closing of the list, fix the day of the next meeting.

In this case it shall not be necessary to convene the creditors anew, who have not appeared in person or by attorney.

The curators are nevertheless holden to give to the creditors who have not presented themselves notice of this subsequent meeting, by letter and by publication in a newspaper, if this has been ordered by the judge-commissary.

796. The creditors present, who do not reside at the place, where the High Court of Justice is established, are holden to make election of domicile, by the Proces-verbal, in that place.

In default thereof all acts and notices can be served upon or communicated to them at the office of records (Griffie) of the High Court of Justice.

797. If the meeting has been adjourned on account of a dispute, which requires a judicial decision, the day of the subsequent meeting shall be fixed by the judge-commissary as soon as the judgement shall become absolute.

Notice to the creditors to attend said meeting takes place by the curators, in that case, in the following manner :

Those, who have been present in person or by attorney at the first meeting, by letters delivered at their residences, if they reside at the place where the High Court of Justice is established ; and the other creditors who were present likewise by letters delivered at the elected domicile, or, in default of such election, at the office of records of the High Court of Justice.

The other creditors by placing a notice in a newspaper, if this is ordered by the judge-commissary.

798. On the day appointed, the further verification of the claim shall be continued, in manner as is directed by the articles 789, 790, 791 and 792.

The creditors who failed to attend the first meeting shall not be entitled to contest the validity of the claims already entered and carried to the list of those which have been allowed.

799. If a dispute arises with respect to the verification of the claims of creditors mentioned in the preceding article, the judge-commissary shall make mention thereof in his proces-verbal, and further proceed as is directed by art. 793.

The action at law in respect of this dispute, shall however neither prevent the deliberations and decision concerning the accord offered by the insolvent, nor the liquidation of the estate.

800. If the proceeding cannot be concluded in one day at the first or at the following meeting, the judge-commissary shall adjourn the sitting each time to another day, without further notice of a meeting being required.

801. The creditors who failed to appear either at the first or second meeting shall not be acknowledged as creditors in the estate, as long as they have not caused their claims to be verified, and have not made oath, if required, to the validity of the same.

This verification shall take place in the manner as is directed by article 837.

802. The curators are holden to take part in all law suits relative to the verification of debts, for the preservation of the rights of the estate.

The high court of justice after having heard the public ministry, shall, if possible, decide by one and the same judgement on all disputes.

803. If the insolvent resides or if the office of the insolvent association is established at one of the islands Bonaire, Aruba, St. Martin, St. Eustatius or Saba, the judge-commissary can charge the canton-judge with the duties of the verification.

In that case the acts which the judge-commissary is charged with by the articles 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 798, 799, and 800, shall devolve upon the canton judge.

After the termination of each verification the canton judge shall send, as soon as possible, the list of admitted creditors, with the proces-verbal and the procurations which have been laid over to the Griffiger (recorder) of the high court of justice.

SECTION THE FOURTH.

Of the accord.

(Composition.)

804. The insolvent is authorised to offer and accord to the general body of creditors.

805. If, at the latest within eight days before convening the first meeting for the verification of the claims, the insolvent shall have filed a draft of accord at the office of records of the High Court of justice, and transmitted a copy to the judge commissary, the same can be immediately taken in deliberation and decided upon in the case provided for by the first clause of art. 794.

If the Canton judge is charged with the verification, the draft of the accord shall also be deposited at the office of records of the canton court, and a copy thereof transmitted to the canton judge.

806. The deliberation and decision shall be adjourned to a subsequent meeting to be fixed by the judge-commissary :

1. when, in the case of the first clause of article 794, one or more creditors shall desire to deliberate further upon the draft.
2. when, in the case of the last clause of the aforesaid article, a second meeting was obliged to be convened, for the purpose of continuing the verification of the claims ;
3. When the draft of the accord, has not been filed at the office of records within the proper time, nor at the first meeting, but was only presented at a subsequent meeting, and one or more creditors desire, that no deliberation or decision shall be taken immediately in respect thereof.

807. The creditors only whose claims have been allowed and entered on the list mentioned in article 790, as well as those who have been admitted as creditors by a final judgement, are authorised to take part in the deliberation and the decision upon the accord offered.

The privileged creditors, or those who hold mortgages or pledges have no vote, unless they renounce in favor of the estate their right of privilege, pledge or mortgage.

This renuntiation is not operative, if the accord does not take place.

808. If at the meeting called to deliberate upon the accord, creditors should as yet appear, who failed to be present at the former meetings, they shall be admitted, provided the verification of their claims, does not give rise to any dispute, and if they immediately make oath, if thereto required.

809. At the deliberation the creditors who were previously represented by attorneys, to whom the oath was deferred, shall also be admitted after they have taken the said oath either in person or by-attorney.

810. The accord cannot be accepted than with consent of two thirds of the concurrent creditors who represent three fourths of the claims which are not privileged, nor secured by pledge or mortgage, or with consent of three fourths of those creditors, who constitute two thirds of the said amount.

811. If three fourths of the creditors present at the meeting, and representing more than half of the amount of the claims accede to the accord, the deliberation shall for once be postponed to another day as near as possible, to be appointed by the judge-commissary, without further call.

812. The accord shall, after the acceptance, be immediately signed by the creditors who have acceded thereto.

813. The decision shall be noted in the proces-verbal of the judge-commissary, and, in case of acceptance of the accord, he must present the same for homologation to the High Court of Justice within eight days after the expiration of the hereafter mentioned term for making opposition.

814. If the verification has taken place in presence of the canton-judge, the deliberation and decision upon the accord shall also take place before him.

In that case, the duties with which the judge commissary, pursuant to articles 806, 808, 809, 811 and 813, is charged, shall devolve to the cantonjudge.

The proces-verbal shall be sent by him, after expiration of the term allowed for making opposition, as soon as possible to the recorder (Griffier) of the High Court of Justice.

815. The creditors whose claims shall have been allowed at the time of the deliberation relative to the accord, and who shall not have acceded to the same, can make opposition against its homologation, provided they serve upon the curators and the insolvent an act of

opposition, setting forth the motives, whereof a copy must be filed at the office of records, the whole ultimately within eight days after acceptance of the accord, the day of acceptance not included there under.

The opposition can among other motives, be grounded thereupon, that the assets of the estate considerably exceed the amount stipulated by the accord.

816. In case of opposition, the judge-commissary shall by a writ appoint the day on which he shall make report to the High Court of Justice in respect thereof.

This writ shall be served by the curators, as soon as possible, and at least eight days before the appointed court-day, upon the parties mentioned in the preceding article.

The insolvent has the right to appear for the purpose of defending or elucidating the accord.

The creditors who have acceded to the accord, or who were not present at the deliberation upon the same, can appear before the court and intervene in the suit.

817. The High Court of Justice can after the expiration of the term for opposition, whether it be made or not, on the conclusion of the public ministry, grant or refuse the homologation.

818. The homologation renders the judgement binding for all the creditors without distinction, known or unknown, inclusive of those, who may present themselves later; saving the right of those who are privileged, or who hold a pledge or mortgage.

In no case however can the creditors, who failed to appear until after the homologation of the accord, make claim for any restitution from the other creditors, on account of dividends, which according to the accord were paid from the estate, without prejudice to their right against the insolvent for the amount fixed by the accord.

819. After the judgement, whereby the homologation is granted, shall have been served upon the curators, they shall be obliged to rendered account to the insolvent in presence of the judge-commissary.

The disputes which may arise in respect thereof, shall be referred by the judge-commissary.

The disputes which may arise in respect thereof, shall be referred by the judge-commissary to the High Court of Justice.

In default of contrary stipulations in the accord, the curators shall deliver to the insolvent upon a proper discharge, all the goods, moneys, effects, books and papers belonging to the estate.

The judge-commissary shall make mention of the whole in his Proces-verbal.

820. The High Court of Justice is authorised, upon the proposal of the judge-commissary and after hearing the Public Ministry, at the time of granting the homologation, to rehabilitate immediately the unfortunate insolvent who has acted in good faith.

In all other cases rehabilitation cannot take place than in the manner indicated in the last section of this book.

821. If no accord has been offered or accepted, or if the homologation is refused, the estate shall be declared insolvent by the High Court of Justice, who shall order the estate to be liquidated by the curators.

SECTION THE FIFTH.

Of the liquidation of the estate.

822. As soon as the writ mentioned in the preceding article shall have been issued, the curators shall proceed to the liquidation of the estate, in conformity with the following directions.

823. The movable goods found in the estate shall be sold in public by the curators, before a competent functionary designated for this purpose by the judge-commissary, and in conformity with local usage, unless the high court of justice, on the report of the judge-commissary, may order, that in the interest of the creditors in general one or more special things, shall be sold by private sale, or shall be taken in at the sale of the immovables, in both cases for or above the price, at which the same shall be estimated by experts appointed for this purpose.

824. The holder of a pledge or pawnee, can exercise all the rights, which the law allows him, in the same way as if there had been no failure.

All sommations relative thereto, required by the law, shall be done by the curators.

The curators can nevertheless, with authorisation of the judge-commissary, cause to be cited, in case of need, the pledgee in order, that a term be fixed within which he shall be obliged to pursue his rights in law and after the expiration thereof, in case of default, the curators shall be authorised to reclaim the things pledged or pawned and to cause the same to be sold themselves in the manner prescribed by the preceding article, without prejudice to the right of the pledgee.

825. The pledgee or pawnee, who has made use of his rights, is holden to account to the curators for the proceeds of the things sold, and to deliver to them the balance of the proceeds above what is due, with interests and costs.

If the said proceeds are not sufficient to satisfy the pledgee, he takes in the estate for the surplus as a concurrent creditor.

826. The curators can with the authorisation of the judge-commissary, redeem the thing pledged on paying whatever is due with interests and costs.

827. The immovable goods belonging to the estate, shall be sold in public by the curators in the presence of a competent functionary thereto designated by the judge-commissary, conformably to local usage.

If the immovables are encumbered with mortgage inscriptions, the provisions of article 1235 of the civil code must be observed.

828. In case of the stipulation, mentioned in the second clause of article 1203 of the civil code, the creditor mortgagee can exercise his rights, as if no failure had taken place.

In order to proceed to the sale, he is however obliged, besides the formalities prescribed by article 1235, to cause to be notified to the curators the day of the sale, at least thirty days before the adjudication, unless the sale had already commenced before the failure.

829. The creditor mortgagee of whom the preceding article treats, is holden, after the sale of the mortgaged property, to the same obligations, as prescribed by the first clause of art. 825 with respect to the pledge.

830. The curators can, if need be by process of law, in the same manner as is mentioned in the second clause of article 824, cause to be fixed the term, within which the creditor mortgagee indicated in article 828, shall be holden to proceed to the sale, and after the expiration of this term, in case of default, the curators shall themselves be authorised to cause the property to be sold, without prejudice to the right of the creditor to the proceeds of the same.

831. The creditor mortgagee, who has not been paid the capital, interests and costs in full, has a claim against the estate for the residue, as concurrent creditor, conformably to what is prescribed by art. 825.

832. After the sale of the goods, movables as well as immovables, the creditors shall draw up a schedule of admitted creditors, who, at the time of the verification of their claims, alleged to have a privilege, pledge or mortgage.

For this purpose they shall take charge of the titles to the claims giving receipt therefor. The judge-commissary shall make up therefrom the general collocation, (1) indicating the proceeds of the different things sold, the rank which each of the aforementioned creditors is entitled to, and the amount which is due to him, and finally the amount which accordingly will remain for the benefit of the concurrent creditors.

833. The curators are collocated as first privileged creditors on the total proceeds, for the costs incurred by the failure, inclusive of their compensation.

This compensation is fixed at two and a half percent on the proceeds of the sale of the movable and immovable goods, on the other receipts, and on the ready moneys found in the estate, without prejudice to the right of the high court of justice to grant the curators moreover an extra allowance, if by reason of the trifling value of the estate or of extraordinary duties, such shall be deemed equitable.

(1) Collocation. "The act by which the creditors of an estate are arranged in the order in which they are to be paid according to law.

The order in which the creditors are placed is also called Collocation. 2. Low. c. q. 139. Bouvier page 292.

834. The collocation of the creditors with the vouchers, shall be filed, upon the order of the judge-commissary, at the office of records by the curators, there to remain during fourteen days for examination by each and every one.

Notice shall be given of the said filing in the manner as is directed by art. 785.

The term of fourteen days begins to run from the day after the notice is posted.

835. If within the aforesaid term no opposition is made, the collocation shall be definitively closed by the judge-commissary, and no subsequent opposition whatever shall be admitted against the same.

836. In case of opposition, the closing of the collocation shall be postponed, until a final decision shall have been taken in respect of the disputes which have arisen.

837. The opposition shall be made at the office of records by a written declaration or by an act, in both cases the grounds of the opposition must be set forth.

A creditor, whose claim has not been previously verified cannot make opposition, unless he demands at the same time, to be still admitted to verify his claim. This verification takes place before the judge-commissary and the curators. The insolvent or his attorney can be present thereat.

The admitted creditors shall be convened by letter for the above purpose against such day as shall be appointed by the judge-commissary, the whole at the charge of the negligent creditor.

838. In case of opposition against the collocation, the disputes in respect thereof shall be referred to the high court of justice by the judge-commissary, who shall at the same time appoint the day of trial.

Every admitted creditor has the right to appear in behalf of his interests.

All disputes shall be decided, as far as possible, by one and the same judgement, on the report of the judge-commissary, and on the conclusion of the public ministry.

839. If it is against the interest of one or the other of the creditors, secured by pledge or mortgage, to wait for the conclusion of the general collocation, and if a separate collocation is not prejudicial to the other creditors of the estate, the high court of justice can, upon the demand of the interested party, after having heard the curators, and upon the report of the judge-commissary, order a separate collocation to be made in the manner as afore indicated for the proceeds of the goods, whether movable, or immovable, to be specified in the judicial order.

In this case, the creditor shall be paid from the proceeds of the goods, and where there is a mortgage, the inscriptions shall be cancelled.

840. The high court of justice shall order, after closing the general collocation, the erasure of inscriptions on the goods sold, in the manner as is directed by article 1237 of the civil code, with observance of the provisions of the article 1238 and following of the said code.

841. The moneys which, after closing the collocation, remain over for the benefit of the concurrent creditors, shall be distributed among them proportionally.

The curators are however authorised, with consent of the judge-commissary, even before closing the collocation, to make one or more provisional dividends, from the moneys disposable for this purpose.

The judge-commissary shall determine on each occasion the amount of the dividend, and the manner in which the creditors shall be notified of the dividend which is to be made.

842. The mortgage creditors shall share with the concurrent creditors in the dividends which take place before the payment of the purchase sum of the goods encumbered with mortgage, in proportion to the full amount of their claims.

Whatever they may have thus wise received before hand shall be deducted from the amount they are entitled to on the proceeds of the sale of the goods encumbered, and the amount which has been received beforehand, shall be returned to the general estate.

The preceding provisions are also applicable to debts secured by pledge or which are privileged.

843. Every creditor, who failed to be present at the proceedings of the verification, can, as long as the final dividend has not taken place, make opposition against all further dividends of ready moneys, by an act served upon the curators.

In this case, he is still holden to cause his claims to be verified, and if required to take oath to their validity, before the judge-commissary, and in presence of the curators and the admitted creditors, after the latter shall have been convened by letter at the expense of the opposing creditor, to meet on a suitable day, to be fixed by the judge-commissary.

844. If the claim is allowed, if necessary after judicial examination, the creditor is authorised to exercise his right on the amounts which have not yet been divided, even for the portion which may have been already shared among the admitted creditors.

He can however, in no case reclaim any part from the latter.

845. The privileged creditor retains in the case of the preceding article, his right to the proceeds of the thing or things, on which his privilege was founded, for so far as there may be still moneys on hand in the estate, in whatsoever manner derived.

846. A mortgage creditor, who has not caused his claim to be verified in time, can, for the preservation of his right of mortgage and for the unmortgaged overplus, make opposition against the payment of the moneys which have not yet been divided, provided that he shall cause his claims to be as yet verified, and if necessary give oath to their validity.

He retains in that case, all his rights, and, if the property mortgaged has been sold, he can enforce his said rights in the same manner as is directed in the preceding article with respect to privileged creditors.

847. If the insolvent is not personally bound for the payment of a debt secured on an immovable property which he holds as third person, the mortgage creditor has no claim upon his estate for the deficit.

848. The creditor who holds a joint and several obligation between the insolvent and other joint-creditors who have likewise failed, can share in all their estates, until the debt shall have been discharged in full.

849. The creditor, who is secured by suretyship, participates in the estate of the insolvent for his claim, under deduction of whatever amount he has received from the surety.

The surety is entitled to whatever he has paid for the discharge of the insolvent.

850. In case of failure of the husband, the wife retakes in natura all the movable and immovable goods, which belong to her, and which do not fall into community.

The goods excluded from the community at the time of the marriage, must be proved in the manner as directed by art- 199 of the Civil Code.

The movable goods acquired by the wife during marriage by inheritance, legacy or donation, and excluded from the community, must be proved by an inventory made thereof, or by other documents, to the satisfaction of the judge.

The goods proceeding from the investment or reinvestment of moneys, belonging to the wife separate in property, must also be taken back by her, provided said investment or reinvestment be proved by documents in good form, to the satisfaction of the judge.

851. The wife exercises her mortgage rights in like manner as all other creditors of similar character. She participates for her personal claims with the other concurrent creditors.

852. The goods retaken by the wife by virtue of art. 850, remain bound for the mortgages and debts, with which they were legally encumbered.

853. The wife has no claim against the estate for benefits accorded her by the marriage contract; likewise the creditors can acquire no benefit from the advantages, that the wife has stipulated in favor of her husband by the marriage contract.

854. The curators can be authorised by the judge-commissary to transact with the debtors of the estate, likewise to make with them compositions or compromises.

The agreements concluded between them, in order to be valid, must be approved by the high court of justice.

855. When no probability exists of more moneys being received, a meeting of the creditors shall be called, at a day to be specified by the judge-commissary, for the purpose of auditing the accounts which shall be submitted by the curators in presence of the judge-commissary, the balance shall be divided among the creditors and the curators shall be discharged.

If the estate is charged with the payment of an annuity, the necessary means shall be adopted for the due execution of the provision of art. 1802 of the civil code.

856. If after the discharge of the curators, it should appear that there are yet active debts due or effects belonging to the estate, which at the time of the liquidation were unknown, the high court shall, on the demand of the most diligent creditor, appoint a judge-commissary and shall further designate either the former curators or others for the purpose of dividing among the creditors the amount or the proceeds of the said debts or effects.

857. If, after the discharge of the curators, the creditor comes in possession of effects before his rehabilitation, the insolvent upon the demand as above stated, shall be heard by the high court of justice or duly notified to appear.

The appointment of the judge-commissary and of the curators shall not be made in this case, if the effects fallen to the insolvent are of such trifling value, that after deduction of the presumed expenses, the creditors have no real interest thereby.

858. The arrest, which was put in execution against the debtor before the declaration of failure, remains of force in conformity with the provisions of the code regulating civil proceedings.

859. After the declaration mentioned in article 821, the creditors can cause to be put in execution the arrest previously pronounced against the insolvent.

860. Notwithstanding the declaration of failure and the insolvency following thereupon, the insolvent can, for the preservation or recovery of his personal liberty, make application to the high court of justice to the end, that no civil imprisonment shall be pronounced against him, or that he shall be released therefrom, if he is already imprisoned or if a detainer has been lodged against him.

861. The application mentioned in the preceding article, shall be granted by the high court of justice in the cases where the insolvent according to the Code of Civil Procedure could be admitted to enjoy the privilege of judicial cession.

Before taking a final decision on the application, the high court shall order, that the creditors who caused the applicant to be imprisoned or who lodged a detainer against him, shall be heard or duly cited, and further more, that the application shall be publicly made known by posting a notice on a board (table) in the court-hall of the high court, and further at such place as the judge shall indicate.

Every creditor who has obtained a judgement carrying civil imprisonment, can within the time of one month, make opposition to the application, and the high court of justice shall thereupon give a decision after hearing the public ministry.

SECTION THE SIXTH.

Of rehabilitation,

862. The insolvent, who has been immediately rehabilitated at the time of the homologation of the accord, pursuant to article 820, or his heirs, in the case mentioned in article 735, are authorised to

present a petition for rehabilitation to the judge, who has pronounced the declaration of failure, even when the insolvent may be residing elsewhere.

863. Rehabilitation shall not be accorded to those, who have been condemned on account of bankruptcy, theft, swindling or abuse of confidence in respect of moneys or goods given in deposit.

864. The insolvent or his heirs shall not be admissible in their demand, unless they annex to the petition the proof, that all the creditors, to the content of each one of them, have been satisfied.

865. The petition must be affixed in the same manner, as directed above by the second clause of art. 861. Notice thereof shall moreover be inserted in a newspaper, if this is ordered by the high Court.

866. Every creditor can, within the time of two months from the insertion of said notice, make opposition to the demand, by an act served upon the recorder (Griffier) (1) of the high court of justice.

This opposition can only be grounded there upon, that the debtor has not duly complied with the direction contained in art. 864.

867. On the expiration of the aforesaid two months, the high court of justice, whether opposition has been made or not, shall grant or refuse the demand by final judgement, rendered upon the conclusions of the public ministry.

868. As soon as the judgement carrying rehabilitation is rendered, the same shall on the request of the rehabilitated insolvent, be read openly in the court-hall (during a session) of the high court of justice, and inscribed upon the registers.

If the rehabilitated insolvent resides else where, he can demand, that the reading and inscription of the said judgement shall moreover take place at his actual residence.

CHAPTER THE SECOND.

OF PROLONGATION OF TIME FOR PAYMENT.

(RESPITE).

869. Prolongation of time for payment is exclusively accorded to merchants, who by extraordinary circumstances of war or other unforeseen calamities, are incapable of discharging their creditors at the moment, but who, according to their assets or balance sheet, confirmed by good and valid vouchers, prove that by means of a prolongation to be granted them, they will be able to satisfy them in full.

870. The petition for prolongation shall be filed at the high Court of justice; it must be signed by the debtor and his practitioner.

(1) In the original, the service of this act, as well as that mentioned in art. 837 is directed to be made at the office of records (Griffie) but by this is meant that it shall be served upon the Griffier (Recorder).

871. The debtor must annex to this petition :

1. The proof of the unforeseen calamities, to which he has referred ;
2. A statement or balance sheet, confirmed with the necessary vouchers, and an estimate, made up by him of his effects and assets ;
3. A statement of the names and places of residence of his creditors, and the amount of their claims ;
4. A particular statement, comprising the names and places of residence of the creditors, who are domiciliated or are present in the island, where the high court of justice holds its sittings.

All these documents shall be filed at the high court of justice, in order that the examination thereof may be free to all persons.

872. The high court of justice orders immediately, that the creditors placed on the list mentioned in clause No. 4 of the preceding article, as well as the debtor, shall be summoned by letter by the recorder (Griffier) against a day not remote, to be fixed by the high court of justice in order to be heard on the petition.

Every creditor, wherever he may reside, can appear, even without summons.

873. On the appointed day, the creditors who have appeared shall be heard by the high court of justice upon the petition.

If it is clearly proved, that there are no grounds whatever for granting prolongation, the high court of justice shall refuse at once and for good the demand made.

In every other case the high court grants provisional prolongation, and appoints two or more persons, by preference from among the principal creditors, in order to administer the affairs of the debtor in concert with him.

The appointees can at all times, upon their demand or on that of one or more creditors, be discharged and replaced by others.

The judgement, whereby provisional prolongation is granted, is not appealable.

874. If an application for prolongation is made, and one or more creditors, pursuant to article 734, shall demand the declaration of failure of the debtor, a decision shall be taken beforehand on the first application, in the manner as is directed in the following article.

875. If provisional prolongation has been granted, the demand for a declaration of failure shall remain indetermind until the high court shall have decided on the definitive prolongation.

If the provisional prolongation has been refused, the high court of justice can, if there are sufficient grounds, pronounce the declaration of failure.

876. As soon as the administrators mentioned in the third clause of article 873 have been appointed, they shall be holden, upon their responsibility, to make known their appointment by notice affixed at the places and inserted in a newspaper, as shall be designated by the high court.

877. At the same time that provisional prolongation is granted, the high court of justice shall place the documents in hands of two judge-commissaries.

The said commissaries shall thereupon order the appearance both of the debtor and his creditors upon a day which shall be timely notified by the applicant, in the manner as directed by the preceding article.

Copy of the petition, likewise of the documents, shall in the mean while be filed both at the office of records of the high court of justice and at that of the practitioner mentioned in article 870, for the examination of all persons.

878. On the day of appearance, there shall be delivered to the judge-commissaries by or on the part of the debtor a declaration from the appointed administrators, specifying that it has appeared to them, after examination, that the statement or balance sheet annexed to the petition is correct, and agrees with the books and further documents.

879. At the appointed day the creditors and the debtor shall be heard by the judge-commissaries, who shall thereupon make report to the high court of justice, concerning the compliance with the formalities prescribed by law, concerning the inclinations of the creditors with respect to the petition, and likewise of whatever shall have been proved to them touching the extraordinary circumstances and calamities alleged by the debtor, and whether there exists or not any probability that by means of the prolongation, he will be enabled to satisfy his creditors in full and finally whether any traces of bad faith (fraud) have been discovered in the acts of the applicant.

880. If from the report of the judge-commissary, it shall appear to the high court of justice, that two thirds of the concurrent creditors, whose claims constitute three fourths of the debt, or that three fourths of the said creditors, whose claims amount to two thirds of the debt, are opposed to the petition, the same shall be rejected immediately, without further examination.

In the contrary case, the high court shall decide, as it shall deem fit. This decision is not subject to appeal.

In all cases the high court shall order, that the administrators must make known whether the petition has been granted or rejected, in the manner as directed by article 876.

881. If for payment is granted by the high court, it judges necessary, not exceeding the provisional prolongation has

The prolongation cannot be extended, unless in consequence of urgent reasons and after a new and complete examination in the manner as is directed in the present chapter.

882. As soon as the provisional prolongation has been granted, the debtor is no longer competent, without the cooperation, authorisation or assistance of the administrators, to alien, pledge or mortgage his movable or immovable goods, to receive or pay out moneys, or to perform any administrative acts.

883. The payment of debts, existing at the time of the application for prolongation, can not, during the same, be otherwise made than to all the creditors, in proportion to their claims, saving the provisions of article 886.

884. During the existence of the provisional or definitive prolongation, the debtor cannot be compelled to pay his debts; all proceedings in execution already commenced even those against the person shall be stayed.

The arrest previously laid upon the person or on the goods of the petitioner remains in force, without prejudice to his right, with the authorisation or assistance of the administrators, and where the interests of the creditors may require it, to demand at law the lifting of the one or the other, on condition of giving sufficient security for the entire payment of the debt, in the event, that on the expiration of the prolongation, all the other creditors shall receive payment in full.

885. The prolongation does not stay the prosecution of suits at law already commenced, nor shall it prevent the institution of new ones.

Where the suits have however merely for object the demand for payment of a debt acknowledged by the debtor, and where the claimant has no interest to obtain a judgement for the enforcement of rights against third persons, the judge can, after having certified to the acknowledgement of the debt, suspend the making up (pronciation) of the judgement during the course of the prolongation.

886. The prolongation does not take effect with respect to :

1. The collection of taxes ;
2. The rights of mortgage, pledge and other real rights ;
3. The expenses of maintenance ; (1)
4. Hire and rents ;
5. Wages of domestics, workmen and other servants ;
6. Debts for necessities furnished for the ordinary support of the debtor and of his family, during the six months preceding the prolongation.

887. The prolongation shall operate to the advantage to co-creditors, or to sureties who have renounced the benefit of discussion. (2)

(1) This refers to the support of the debtor and his family. If the parents and reciprocally. *De Pinto.*

(2) "Benefit of discussion. A creditor who has been refused, the high court shall pronounce the declaration by which the property of the principal debtor can be laid to the sureties."

888. The high court of justice can, on the demand of one or more creditors, and after having heard or duly summoned the debtor and the administrators, revoke the prolongation if it is proved that during the same the debtor acts in bad faith or endeavors to wrong his creditors.

Similar revocation can take place on the demand of the administrators, and after having heard or duly summoned the debtor, who is proved that during the prolongation, the condition of the estate, even without the fault of the debtor, has deteriorated in such manner, that the assets have become insufficient to pay all the debts in full.

The judgement by which the prolongation is withdrawn is not subject to appeal.

The withdrawal of the prolongation, shall be made known in the manner prescribed by art. 876.

Final provision.

889. If within the time of one month after the refusal of the prolongation, or after expiration of the time for which it was granted, the failure of the debtor commences in the manner mentioned in article 737 and the first chapter of this book, the terms mentioned in the articles 741, 742, 743 and 744 shall be accounted to have begun on the day on which the petition has been presented to the high court of justice pursuant to article 870.

CENTRALE BOEKWERIJ
Kon. en Kon. v. l. Tropen
AMSTERDAM









